

Exhibit A

**REQUEST FOR PROPOSAL (“RFP”) FOR THE PURCHASE,
INSTALLATION AND OPERATION OF A BICYCLE SHARING SYSTEM
IN THE CITY OF CHICAGO**

Specification No. 100320-A

Required for use by:

**CITY OF CHICAGO
(Chicago Department of Transportation)**



This RFP distributed by:

**CITY OF CHICAGO
(Department of Procurement Services)**

All proposals and other communications must be addressed and returned to:

Jamie L. Rhee, Chief Procurement Officer
Attention: Jacoby Radford, Assistant Procurement Officer
Department of Procurement Services
Bid and Bond Room - Room 301, City Hall
121 North LaSalle Street
Chicago, Illinois 60602

**PROPOSALS MUST BE RECEIVED NO LATER THAN 4:00 P.M., CENTRAL
STANDARD TIME, ON DECEMBER 16, 2011**

**RAHM EMANUEL
MAYOR**

**JAMIE L.RHEE
CHIEF PROCUREMENT OFFICER**

**REQUEST FOR PROPOSAL (“RFP”) FOR THE PURCHASE, INSTALLATION AND
OPERATION OF A BICYCLE SHARING SYSTEM IN THE CITY OF CHICAGO**

Specification No. 100320-A

Table of Contents

I	GENERAL INVITATION	1
	1.1 PURPOSE OF THE REQUEST FOR PROPOSAL	1
II	SCOPE OF SERVICES.....	2
	2.1 Scope of Services.....	2
	2.2 Term of Services.....	2
III	OVERVIEW AND VISION.....	2
IV	GENERAL INFORMATION AND GUIDELINES.....	3
	4.1 Communications between the City of Chicago and Respondents	3
	4.2 Deadline and Procedures for Submitting Proposals	4
	4.3 RFP Information Resources.....	5
	4.4 Procurement Timetable.....	5
	4.5 Confidentiality	5
V	PREPARING PROPOSALS: REQUIRED INFORMATION	6
	5.1 Format of Proposals.....	6
	5.2 Required Content of Proposals - Volume I Statement of Qualifications	6
	5.3 Volume II - Required Content - Representations and Certifications.....	11
VI	EVALUATING PROPOSALS.....	13
	6.1 Evaluating Process	13
	6.2 Evaluation Criteria.....	14
VII	SELECTION PROCESS.....	15
VIII	ADDITIONAL DETAILS OF THE RFP PROCESS.....	16
	8.1 Addenda	16
	8.2 City's Rights to Reject Proposals	17
	8.3 No Liability for Costs	17
	8.4 Prohibition on Certain Contributions – Mayoral Executive Order No. 2011-4.....	17
	8.5 False Statements	18

REQUEST FOR PROPOSAL (“RFP”) FOR THE PURCHASE, INSTALLATION AND OPERATION OF A BICYCLE SHARING SYSTEM IN THE CITY OF CHICAGO

Specification No. 100320-A

List of Exhibits

- | | |
|------------|--|
| Exhibit 1 | Scope of Services |
| Exhibit 2 | Company Profile Information |
| Exhibit 3 | Company References/ Client Profile Information |
| Exhibit 4 | Cost Proposal - Template - |
| Exhibit 5 | Special Conditions Regarding Disadvantaged Business Enterprise (DBE) Commitment, including
1. Schedule B: Affidavit of Joint Venture (DBE/Non-DBE)
2. Schedule C-1: Letter of Intent from DBE to Perform as Subconsultant, Subcontractor, Supplier
3. Schedule D-1: Affidavit of DBE Goal Implementation Plan
4. Schedule F: Report of Subcontractor Solicitations |
| Exhibit 6 | Online City of Chicago Economic Disclosure Statement and Affidavit and Appendix A (EDS) Instructions and Attachment A, Online EDS Acknowledgement |
| Exhibit 7 | Key Personnel |
| Exhibit 8 | Insurance Requirements and Insurance Certificate |
| Exhibit 9 | City of Chicago Sample Professional Services Agreement |
| Exhibit 10 | Sample Contractors Performance & Payment Bond |
| Exhibit 11 | Public Work Provisions |
| Exhibit 12 | Required Federal Provisions |

REQUEST FOR PROPOSAL (“RFP”)

for the

PURCHASE, INSTALLATION AND OPERATION OF A BICYCLE SHARING SYSTEM IN THE CITY OF CHICAGO

Specification No. 100320-A

I GENERAL INVITATION

1.1 PURPOSE OF THE REQUEST FOR PROPOSAL

The City of Chicago (“City”), acting through its Chicago Department of Transportation (“Department” or “CDOT”) invites the submission of proposals from firms or organizations experienced in establishing and operating large bicycle sharing systems and with expertise in purchasing, installing, and operating of a bicycle sharing system (“Services”) beginning in 2012. The system will be owned by the City. The City invites the submission of proposals from firms.

Companies with demonstrated experience in this area, and with an interest in making their services available to the City of Chicago, are invited to respond to this RFP. For purposes of this RFP, **Chief Procurement Officer (“CPO”)** means the Chief Procurement Officer for the City of Chicago. **“Commissioner”** means Chief Executive Officer of the City ‘Chicago Department of Transportation. **“Respondents”** means the companies or individuals that submit proposals to this RFP. The documents submitted will be referred to as **“Proposals.”**

The purpose is to find a qualified company to provide Services for a bicycle sharing system to enable people within a designated area to rent bicycles from one location and return them to another. Rentals are intended for short trips, under five (5) miles. Further information on the proposed system is provided in Exhibit 1, Scope of Services identified in this RFP.

The Services contemplated are professional in nature. The selected Respondent (“Contractor”) acting as an individual, partnership, corporation or other legal entity, must be of professional status, licensed to perform in the State of Illinois and licensed for all applicable professional discipline(s) requiring licensing and is governed by the professional ethics in its relationship to the City. All reports, information, or data prepared or assembled by the Contractor under a contract awarded pursuant to this RFP are confidential in nature and will not be made available to any individual or organization, except the City, without the prior written approval of the City. Any contract resulting from this RFP document will contain a provision requiring confidentiality on the part of Contractor.

The Contractor must be financially solvent and each of its members if a joint venture, its employees, agents or subcontractors of any tier must be competent to perform the Services required under this RFP document.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

II SCOPE OF SERVICES

2.1 Scope of Services

The Services that the City seeks to acquire are described in detail in Exhibit 1 to this RFP.

2.2 Term of Services

The initial contract term will be five (5) years from the date on which a contract is awarded by the City. In addition, the contract may provide that the City may elect to extend the contract up to two 5-year periods to provide for ongoing Services. A copy of the City of Chicago Professional Services Agreement is attached as Exhibit 9. The City may from time to time revise its terms and conditions. Respondent must identify any objections that it has to this Agreement in its response to this RFP.

III OVERVIEW AND VISION

Establishing a bicycle sharing system is one of Mayor Rahm Emanuel's key strategies to achieving goals that the City becomes the most bicycle-friendly city in the United States. A bicycle sharing system will:

- Enhance Chicago's existing public transportation system by providing bicycles to complete the first and/or last leg of a trip (e.g., from a train station to the workplace).
- Expand the health and wellness benefits of bicycle transportation beyond traditional enthusiast groups to everyone living or working in the City.
- Reduce dependency on automobiles, particularly for short trips, reducing traffic congestion, vehicle emissions, and the demand for parking.

Chicago is the third largest city in the United States, with a population of 2.7 million residents. Chicago's flat topography, high transit usage, and population density make it an ideal city for a bicycle sharing system.

Chicago currently has 282 miles of bikeways. This includes 125 miles of marked on-street bike lanes and 50 miles of off-street trails. The City will be establishing 100 miles of protected bike lanes by 2015.

The City intends to establish the largest bicycle sharing system in the United States in two phases:

- Phase I – 3000 bicycles (300 stations) in 2012.
- Phase II – 2000 bicycles (200 stations) in 2013 or 2014. Note that Phase II is subject to the availability of funds.

The City reserves the right to expand the system beyond the anticipated number of stations in Phases I and II.

Bicycle stations must be simple, robust, reliable, and designed for both sidewalk and street installation. The overall system must be efficiently managed, and carefully maintained, with bicycles that are evenly and regularly distributed.

The Cost Proposal will reflect that the city will purchase and own the Stations (as defined below), as well as pay for the services necessary to install the Stations. To the extent that there are proprietary technologies the ownership of which will not be transferred, the City must receive a

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

broad license to use, which at a minimum should include a perpetual, transferable, fully paid-up right to use and modify such technologies.

The City seeks to minimize the use of City funds provided for the operation of the bicycle sharing system. Revenues from user fees and memberships are expected to pay the successful Respondent(s) to operate, maintain and promote a bicycle sharing system.

Operating profits generated by user fees and memberships will be shared by the City and the successful Respondent(s) in a formula to be determined in the negotiation process. The City will be responsible for securing naming rights, sponsorships, and station-based advertising, and will retain these revenues in their entirety.

IV GENERAL INFORMATION AND GUIDELINES

4.1 Communications between the City of Chicago and Respondents

A. Submission of Questions or Requests for Clarifications

Respondents must communicate only with the Department of Procurement Services. All questions or requests for clarification must be submitted to the following e-mail address: jacoby.radford@cityofchicago.org. All questions and requests for clarification must be submitted no later than 4:00 p.m. Central Standard Time on December 8, 2011 or no response will be provided except at the discretion of the City. A Respondent that deviates from any of these requirements is subject to immediate disqualification from this RFP process.

The subject line of the email must clearly indicate that the contents are "Questions and Request for Clarification" about the RFP, and are "Not a Proposal" and must refer to "Request for Proposal ("RFP") for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago, Specification No. 100320-A." No telephone calls or e-mails will be accepted unless the questions are general in nature.

B. Downloadable RFP Documents

Respondents should obtain this RFP from the Bid and Bond Room located at City Hall, 121 N. LaSalle St., Room 301, Chicago, Illinois 60602.

Respondents may request the Bid and Bond Room personnel mail them a copy of the RFP by providing the Bid and Bond Room a Federal Express account number or make arrangements with Bid and Bond Room personnel to have a package ready for pickup by another courier service. The Bid and Bond Room telephone number is (312) 744-9773. The City accepts no responsibility for the timely delivery of materials.

In the alternative, Respondents may download the RFP from URL address: <http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/Specs/2011/Spec100320A.pdf>.

If Respondent chooses to download the RFP document, the Respondent must contact the Bid and Bond Room by faxing a legible copy of Respondent's business card, referencing Specification No. 100320-A to (312) 744-5611 or by calling the Bid & Bond Room at (312) 744-9773 to register Respondent's company as an RFP document holder, which will better enable Respondent to receive any future clarifications and/or addenda related to this RFP. Respondents are responsible for obtaining all RFP materials.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Under no circumstances shall failure to obtain clarifications and/or addenda relieve a Respondent from being bound by any additional terms and conditions in the clarifications and/or addenda, or from considering additional information contained therein in preparing a Proposal. Furthermore, failure to obtain any clarification and/or addendum shall not be valid grounds for a protest against award(s) made under this RFP.

4.2 Deadline and Procedures for Submitting Proposals

- A. To be assured of consideration, Proposals must be received by the City of Chicago in the City's Bid and Bond Room (Room 301, City Hall) no later than 4:00 p.m. Central Standard Time on December 16, 2011. The Bid and Bond Room can be reached at telephone number 312-744-9773.
- B. The City may, but is not required to accept Proposals that are not received by the date and time set forth in Section 4.2.A above. Only the Chief Procurement Officer ("CPO") is empowered to determine whether to accept or return late Proposals. No additional or missing documents will be accepted after the due date and time, except as may be requested by the Chief Procurement Officer.

Failure by a messenger delivery service or printing service to meet the deadline will not excuse the Respondent from the deadline requirement. Hand-carried Proposals must be placed in the depository located in the Bid and Bond Room located in Room 301, City Hall. The time of the receipt of all Proposals to this RFP will be determined solely by the clock located in the Bid and Bond Room of City Hall. It is Respondent's sole responsibility to ensure that the Proposal is received as required.

- C. Proposals must be delivered to the following address:

Jamie L. Rhee, Chief Procurement Officer
City of Chicago
Department of Procurement Services
Bid and Bond Room
Room 301, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Jacoby Radford, Assistant Procurement Officer

- D. Respondents must submit the following Proposal Items:

<u>Proposal Item</u>	<u>Quantity</u>
1. Original Copy - Paper	1
2. Duplicate Copy - Paper	1
3. Electronic Copy - CD-ROM (in PDF format)	6

The original Proposal must be clearly marked as "ORIGINAL". All documents requiring a signature must bear the original signature of Respondent's authorized signatory. Respondent must enclose all documents in clearly labeled sealed envelopes or boxes.

- E. The outside of each sealed envelope or package must be labeled as follows:

Proposal Enclosed
Request for Proposals (RFP) for the Purchase, Installation and Operation of a
Bicycle Sharing System in the City of Chicago
Specification No.: 100320-A
Due: 4:00 p.m., December 16, 2011
Submitted by: (Name of Respondent)

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Package ____ of ____

The City's opening of Respondent's sealed envelope(s) or package(s) containing a Proposal shall neither be deemed nor constitute acceptance by the City of Respondent's Proposal. The City reserves the right to open and inspect all such sealed envelope(s) or package(s), regardless if the same were submitted by the due date and time specified herein, for any purpose, including without limitation, determining the particular RFP to which Respondent has responded, determining if a Proposal was submitted by the date and time specified in this RFP, and in order to determine a Respondent's return address.

- F. **FEES FOR THE SUBMISSION OF PROPOSALS.** Section 2-92-418 of the Municipal Code of the City of Chicago requires for each competitively bid contract and each request for proposal where the estimated dollar value of the Contract, as determined by the Chief Procurement Officer, exceeds \$10,000,000.00 that each bidder or proposer submit with its proposal a non-refundable "submittal fee" in the amount of \$900.00. The submittal fee must be submitted no later than the date and time on which the bid or proposal is due. The submittal fee must be in the form of a certified check, cashier's check or money order payable to the City of Chicago. The CPO has determined the value of the contract for the Services required under this Contract does not exceed \$10,000,000.00. **As a result, a submittal fee to the City with its Proposal to this RFP is not required.**

4.3 RFP Information Resources

Respondents are solely responsible for acquiring the necessary information or materials. Information for preparing a response to this RFP can be located in the following areas of the City's website: www.cityofchicago.org/Procurement:

- Search DBE Directory Database
- Pre-Bid/Proposal Conference Attendees
- Addendums and Exhibits, if any.

4.4 Procurement Timetable

The timetable for the RFP solicitation process is summarized below. Note that these are target dates and are subject to change by the City.

Key Activity	Target Date
City Issues RFP	December 5, 2011
Proposal Questions Due	December 8, 2011
Proposals Due	December 16, 2011

4.5 Confidentiality

Respondent may designate those portions of the Proposal, which contain trade secrets or other proprietary data that must remain confidential. If a Respondent includes data that is not to be disclosed to the public for any purpose or used by the City except for evaluation purposes, the Respondent must:

- A. Mark the title page as follows: "This RFP proposal includes trade secrets or other proprietary data ("data") that may not be disclosed outside the City and may not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

this Proposal. The data subject to this restriction are contained in sheets (insert page numbers or other identification)." The City, for purposes of this provision, will include any consultants assisting in the evaluation of Proposals. If, however, a contract is awarded to this Respondent as a result of or in connection with the submission of this data, the City has the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the City's right to use information contained in the data if it is obtained from another source without restriction.

- B. Mark each sheet or data to be restricted with the following legend: "Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this Proposal."

All submissions are subject to the Illinois Freedom of Information Act (FOIA).

V PREPARING PROPOSALS: REQUIRED INFORMATION

Each Proposal must contain all of the following documents and must conform to the following requirements.

5.1 Format of Proposals

Proposals must be prepared on 8 ½" X 11" letter size paper (preferably recycled), printed double-sided, and bound on the long side. The City encourages using reusable, recycled, recyclable and chlorine free printed materials for bids, proposal, reports and other documents prepared in connection with this solicitation. Expensive papers and bindings are discouraged, as no materials will be returned.

Proposals must be submitted in two separately-bound volumes. The first volume must contain the Respondent's Statement of Qualifications and must be labeled "Volume I, Statement of Qualifications"; the second volume must contain representations and certifications as described herein and must be labeled "Volume II, Representations and Certifications".

Each separate volume and individual sections should be clearly identified and/or separated by labeled tabs and organized in accordance with subject matter sequence as set forth below.

Sections should be separated by labeled tabs and organized in accordance with subject matter sequence as set forth below. Each page of the Proposal must be numbered in a manner so as to be uniquely identified.

5.2 Required Content of Proposals - Volume I Statement of Qualifications

Respondents must submit a separate Proposal for Phase I and Phase II of the Bicycle Sharing System, as described in Exhibit 1. For responses to items 2 through 7 in Section 5.2, Volume I, divide the information applicable to each operating scenario (Phase I and II) by a separate labeled tab.

Respondents are advised to adhere to the submittal requirements of the RFP. Failure to comply with the instructions of this RFP may be cause for rejection of the non-compliant Proposal. Respondent must provide information in the appropriate areas throughout the RFP. Submission of a Proposal in response to this RFP constitutes acceptance of all requirements outlined in the RFP. By submitting a response to this RFP, Respondent is acknowledging that if its Proposal is accepted by the City, its Proposal and related submittals may become part of the contract.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

While the City recognizes that Respondents provide costs in varying formats, compliance with the enclosed costing structure in Exhibit 4 is critical to facilitating equitable comparisons and failure to comply may result in rejection of the Proposal.

The Proposal must include the following information:

1. Cover Letter– limit of one page

Respondent(s) must submit a cover letter signed by an authorized representative of the entity committing Respondent to providing the Services to Phase I (3000 bicycle fleet) and Phase II (2000 bicycle fleet), in accordance with the terms and conditions of any Agreement, which may be awarded pursuant to the RFP process.

2. Executive Summary – limit of ten pages

Respondent must provide an executive summary which address the following information:

- A. Outline the number of years Respondent has been in business and identify Respondent's legal name: (a) its headquarters address, its principal place of business, its legal form (i.e., corporation, joint venture, partnership), (b) the names of its principals or partners, and whether Respondent is authorized to do business in the State of Illinois. If Respondent is a business entity comprised of more than one (1) legal entity, Respondent must identify all legal entities of comprising Respondent; it must identify each entity's respective ownership percentage of Respondent; and Respondent must summarize the role, degree of involvement and experience of each such separate entity;
- B. Indicate the name, address, email address, and telephone number(s) of the principal contact for oral presentation, or negotiations;
- C. Explain its understanding of the City's intent and objectives and its approach to achieving those objectives;
- D. Provide a brief summary of the qualifications, experience, and background of the team and its committed Key Personnel (as herein defined) in performing the Services as detailed in Exhibit 1;
- E. Summarize Respondent's commitment to comply with the DBE requirements as stated in the Special Conditions Regarding Disadvantaged Business Enterprise ("DBE") Commitment, attached to this RFP as Exhibit 5;
- F. Attached as Exhibit 9 is a sample professional services agreement that may become part of the City contract with the selected Respondent. The terms and conditions attached should not be construed as the sum total of the terms and conditions that will constitute the final contract; furthermore, the City may make changes to the attached terms and conditions in its discretion. Respondent must identify any exceptions or objections to those terms and conditions in Exhibit 9 in its Proposal; if Respondent does not list such in its Proposal, the City will not entertain any such exceptions or objections on these provisions during contract negotiation; and
- G. Acknowledgement of receipt of Addendum issued by City, if any.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

3. Project Understanding, Approach and Implementation Plan – limit of forty pages plus a Team Organizational chart and any illustrations, diagrams and/or samples in an Appendix as needed

Respondent must describe its interest, understanding, and approach to providing the required Services for purchasing, installing and operating of a bicycle sharing system in Chicago. Respondent must include an explanation of its approach to project management. Also to be included are: a transition plan, efforts for implementing and monitoring the Services; cost containment strategies; sustainability approaches; the roles and responsibilities of team-member firms; strategies, tools, and safeguards for ensuring timely, quality performance of all required Services; equipment, software, and hardware considerations; training and on-going support; and any additional factors for the City's consideration. A brief overview of the proposed business model should be provided;

Any subcontractors who will be performing Services, including their designation as DBE should be listed along with discussion of their roles and responsibilities.

The Respondent must provide the required information as described below:

- A. Provide an Operating Plan, which is reflective of the specific responsibilities and Level of Service required in the Scope of Services.
- B. Provide a concise narrative response that explains exactly how the Respondent plans to meet the requirements listed. Where applicable, Respondent is encouraged to provide examples of how and where similar requirements are being met (or have been met previously) on other projects. Respondent should use illustrations, diagrams and/or attach sample material in an appendix to provide additional clarity. The Respondent should use this narrative response as an opportunity to convey their understanding of the specific requirement and how their solution has been designed to best meet it.

Respondent must provide a coherent response that addresses each of the requirements described in Exhibit 1, Section II: It is not sufficient to simply restate the requirement and that the Respondent understands and will comply.

- C. Provide a Team Organizational Chart indicating Management Structure and Subcontractors. Describe all responsibilities and services to be provided by members within your Organizational Chart including subcontractors.

4. Professional Qualifications and Specialized Experience of Respondent and Team Members limit of fifteen pages plus a attachments

If Respondent proposes that major portions of the work will be performed by different team members (joint venture partners, subcontractors, etc.), Respondent must provide the required information as described below for each such team member.

- A. Company Profile Information (See Form in Exhibit 2-)

Identify participants in Respondent's "Team." For example if Respondent is a business entity that is comprised of more than one legal participant (e.g., Respondent is a general partnership, joint venture, etc.), then Respondent must identify or cause to be identified all participants involved, their respective ownership percentages, and summarize the role, degree of involvement, and experience of each participant separately.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

If Respondent has a prime contractor/subcontractor relationship instead, this information regarding role, involvement and experience is also required for any subcontractor that is proposed to provide a significant portion of the work.

Provide a chronological history of all mergers and/or acquisitions involving the Respondent team members, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

If Respondent is a joint venture or partnership, attach a copy of the joint venture or partnership agreement signed by an authorized officer of each partner. Each partner must execute:

- (i) Schedule B as shown in Exhibit 5, if joint venture or partnership includes City of Chicago certified DBE firms(s), as applicable.
- (ii) Separate Economic Disclosure Statement and Affidavit ("EDS") completed by each partner and one in the name of the joint venture or partnership as shown in Exhibit 6.
- (iii) Insurance certificate in the name of the joint venture or partnership business entity.

B. Company Reference / Client Profile Information (See Form in Exhibit 3)

Respondent must provide at least 3 references preferably from cities related to contracts of similar scope and magnitude as described in this RFP. No more than one (1) of these references may be from previous or current contracts between Respondent and the City. Experience will not be considered unless complete reference data is provided. At a minimum, the following information must be included for each client reference:

- Client name, address, contact person name, telephone and email address.
- Description of a rental system similar to the Services outlined in Exhibit 1.
- The date when the Service was implemented.
- The location of the Services.
- Nature and extent of Respondent's involvement as the prime contractor (also indicate area of secondary responsibility, if applicable).
- Identify equipment and Services, if any, subcontracted, and to what other company.
- Contract term (Start and End date, or indicate if currently providing services).
- The total dollar value of the Services.

All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to City interview for follow-up.

The City may solicit from previous clients, including the City of Chicago, or any available sources, relevant information concerning Respondent's record of past performance.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

C. Capacity to Perform City Project

Describe how any uncompleted projects and/or contractual commitments to other clients will affect your ability to deliver services, capacity to perform within City's timeline and affect dedicated resources committed to the City's project. Respondent should provide a summary of current and future projects and commitments and include project completion dates. Identify what percentage of the services will be performed utilizing your own workforce, equipment and facilities. What percentage of the work will be subcontracted?

5. Professional Qualifications and Specialized Experience of Respondent and Key Personnel Committed to this Project - limit of three pages plus a Staff Organization chart plus Resumes

Respondent must also provide a summary of the professional qualifications and experience of key personnel who will be dedicated to the services described in this RFP. List key personnel committed to this project in Exhibit 7. For each person identified, describe the following information:

- Title and reporting responsibility.
- Proposed role in this project, including the functions and tasks for which they will have prime responsibility (also indicate areas of secondary responsibility, if appropriate)
- Pertinent areas of expertise and past experience
- Base location
- Resumes or corporate personnel profiles which describe their overall experience and expertise.

Respondent must provide copies of appropriate licenses or certifications required of any individual or entity performing the services described in this RFP in the City of Chicago, County of Cook and State of Illinois, for itself, its partners and its subcontractors, including evidence that Respondent is authorized by the Secretary of State to do business in the State of Illinois. Provide copies with the Proposal submission.

6. Cost Proposal Detail

The City is requesting detailed information regarding the proposed capital and start-up costs and pro forma business plan yearly costs and revenues for the Services required for Phase I and II. In Exhibit 4, provide details in the cost proposal. Respondent is responsible for disclosing any charges or fees not listed on the cost proposal that the City would incur with the Respondent, before, during, and after the implementation.

Respondent must use the provided Template in Exhibit 4 to provide all pricing information and assumptions. Pricing information received in any other format will not be considered and may be cause for the Proposal to be rejected.

For purposes of comparing costs between Respondents, Respondents should not deviate from the compensation methods outlined in Exhibit 4. The City reserves the right to negotiate a final fixed price, terms and conditions with selected Respondent.

7. Disadvantaged Business Enterprises Participation Plan and Commitment - limit of three pages

Respondents must describe their plan for Disadvantaged Business Enterprise ("DBE") participation and their commitment to achieving meaningful technical and financial goals. The current DBE participation goal is 5% of the total contract value.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Consistent with the City's practice of encouraging and facilitating the participation of DBEs in prime contractor roles on City projects, the City urges Respondents to partner with DBE firms at the prime contractor level. To be eligible for favorable consideration under this element of the criteria, proposed DBE participation on a Respondent's team must include well-defined management roles and responsibilities for the DBE team members and must allocate to the DBE financial risk commensurate with the financial rewards available to be achieved by a successful Respondent.

5.3 Volume II - Required Content - Representations and Certifications

1. Disadvantaged Business Enterprises Commitment

Respondent must complete and submit the forms attached hereto as Exhibit 5 to evidence its proposed Disadvantaged Business Enterprise participation. Respondent must prepare and submit a Schedule C-1 and a Schedule D-1 for each proposed DBE subcontractor. Failure to submit these documents, or incomplete document submittal, may result in Respondent being declared non-responsive.

With each Schedule C-1, Respondent must submit a current letter of certification issued by DPS or Illinois Department of Transportation ("IDOT") (this form is included in Exhibit 5). The proposed DBE must be certified by DPS or IDOT at the time of the Proposal submission. The City reserves the right to require Respondents to replace any proposed DBE subcontractor not certified by DPS or IDOT.

All schedules submitted must be original signature. Failure to submit these documents, or incomplete documents, may result in Respondent being declared non-responsive.

In order to determine the best way in which to achieve and document DBE participation, Respondent must refer to the Special Conditions Regarding Disadvantaged Business Enterprise Commitment attached to this RFP as Exhibit 5.

2. Performance Bond

Respondent should provide evidence of its ability to provide the City with a performance bond, which the selected Respondent must furnish in the amount of **twenty five (25%)** of the contract value on the form "Contractor's Performance & Payment Bond," Form P.W.O. 62, a specimen of which is attached as Exhibit 10, by the time the contract is executed. Attention is called to the provisions of 30 ILCS 550/1, et. seq. and to the provisions of Section 2-92-030 of the Municipal Code of Chicago. The surety must be listed as a certified surety in the current edition of U.S. Treasury Department Circular 570 and have an underwriting limitation in that publication in an amount equal to or greater than the amount bid by the Contractor. This Circular 570 is available on the Internet at www.fins.treas.gov/c570. Co-sureties may be accepted in the sole discretion of the Chief Procurement Officer, but each co-surety must individually meet the foregoing requirement. Reinsurance may not be used to achieve a sufficient underwriting limitation. The contract will include the obligation of the Contractor to provide the actual performance bond in one quarter of the contract amount at the time of contract execution. Such performance bond may be used by the City for the installation or removal of bicycle Stations as well as for the purpose specified in 30 ILCS 550/1, et. seq. and to the provisions of Section 2-92-030 and -040. In addition to the performance bond, the City reserves the right in contract negotiations to request a Letter of Credit or similar instrument from the selected Respondent.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

3. Economic Disclosure Statement and Affidavit (“EDS”)

Respondent must submit a completed and executed Economic Disclosure Statement and Affidavit and the Appendix A. See hardcopy EDS forms and Online City of Chicago EDS Instructions and Attachment A, Online EDS Acknowledgement, in Exhibit 6. If Respondent is a business entity other than a corporation, then each member, partner, etc., of Respondent must complete an EDS as applicable, per instructions on the EDS form. In addition, any entity that has an interest in Respondent or in one or more of its members, partners, etc., and is required pursuant to the Municipal Purchasing Act for Cities of 500,000 or More Population (65 ILCS 5/8-10-8.5) or Chapter 2-154 of the Municipal Code of Chicago to provide a disclosure must submit a completed and executed EDS as an “entity holding an interest in an Applicant” as described in the EDS. All affidavits must be notarized. **Upon completion of Online EDS, Respondent shall submit a copy of 2 documents with their proposal: 1) Certificate of Filing printed from system and 2) hardcopy of the executed Attachment A, Online EDS Acknowledgement form in lieu of hardcopy EDS forms.**

Subcontractors may be asked, at the City's discretion, to provide an EDS during the evaluation process.

4. Financial Statements

Respondent should provide a copy of its audited financial statements for the last 3 years. Respondents that are comprised of more than one entity must include financial statements for each entity. The City reserves the right to accept or reject any financial documentation other than the financial statements requested by this section.

If Respondent is unable to provide audited financial statements, state the reasons in your Proposal response and provide financial documentation in sufficient detail to enable the City to assess the financial condition of your company.

Sufficient alternate documentation would be unaudited financial statements from those Respondents not required to have their financial statements audited. At a minimum, the statements need to be the balance sheets and income statements (or equivalent) for the requested three years. Assets/liabilities and income/expenses must be presented in adequate detail for the City to assess the financial condition of the Respondent.

5. Respondent's Corporate History

Respondent must provide a chronological history of all mergers and/or acquisitions (if any) involving the Respondent and each legal entity comprising Respondent, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

6. Business License/Authority to do Business in Illinois

Respondent must provide copies of appropriate licenses or certifications required of any individual or entity performing the services described in this RFP in the City of Chicago, County of Cook and State of Illinois, for itself, its partners and its subcontractors, including evidence that Respondent is authorized by the Secretary of State to do business in the State of Illinois. Provide copies with the Proposal submission.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

These requirements will vary depending upon the circumstances of each Respondent. See the Department of Business Affairs and Consumer Protection's (BACP) website for additional information: www.cityofchicago.org/businessaffairs

If required by law, Respondents are required to have an Illinois Business License. See the State of Illinois, Department of Business Services' website for additional information: www.cyberdriveillinois.com (<http://www.cyberdriveillinois.com>).

Additionally, visit the State of Illinois' Division of Professional Regulation for information regarding the State of Illinois' Professional Certifications: <http://www.idfpr.com/DPR>

7. Legal Actions

Respondent must provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past 5 years in which (i) Respondent or any division, subsidiary or parent entity of Respondent, or (ii) any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation, has been:

- (i) A debtor in bankruptcy; or
- (ii) A plaintiff or defendant in a legal action for deficient performance under a contract or violation of a statute or related to service reliability; or
- (iii) A respondent in an administrative action for deficient performance on a project or in violation of a statute or related to service reliability; or
- (iv) A defendant in any criminal action; or
- (v) A named insured of an insurance policy for which the insured has paid a claim related to deficient performance under a contract or in violation of a statute or related to service reliability; or
- (vi) A principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to deficient performance under a contract or in violation of a statute or related to service reliability; or
- (vii) A defendant or respondent in a governmental inquiry or action regarding accuracy of preparation of financial statements or disclosure documents.

The City reserves the right to request similar legal action information from Respondent's team members during the evaluation process.

8. Insurance

Prior to contract award, the selected Respondent will be required to submit evidence of insurance in the amounts specified in the attached Exhibit 8.

VI EVALUATING PROPOSALS

6.1 Evaluating Process

An Evaluation Committee, which will include the representatives of the Chicago Department of Transportation, and the Department of Procurement Services and may include representatives of other departments of the City ("Evaluation Committee" or "EC") will review and evaluate the Proposals, as described below.

In evaluating Proposals, the EC will first consider the completeness and responsiveness of the Respondent's Proposal. The RFP proposal evaluation process is organized into three phases:

Phase I Preliminary Proposal Assessment

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Phase II Proposal Evaluation

Phase III Site Visits, System Demonstration, and/or Oral Presentations (if necessary)

Phase I - Preliminary Proposal Assessment

Phase I will involve an assessment of the Respondent's compliance with and adherence to all submittal requirements requested in Section 5.2 Volume I, Statement of Qualifications and Section 5.3, Volume II, Representations and Certifications. Proposals which are incomplete and missing key components necessary to fully evaluate the Proposal may, at the discretion of the EC, be rejected from further consideration due to "non-responsiveness" and rated Non-Responsive.

Phase II - Proposal Evaluation

In Phase II, the EC will evaluate the extent to which a Respondent's proposal meets the project requirements set forth in the RFP. Phase II will include a detailed analysis of the Respondent's qualifications, experience, proposed implementation plan, preliminary cost proposal and other factors based on the evaluation criteria outlined in Section 6.2 Evaluation Criteria.

As part of the evaluation process, the EC will review the information required by Section V, above, for each Proposal received. The EC may also review any other information that is available to it, including but not limited to information gained by checking references and by investigating the Respondent's financial condition.

The City reserves the right to seek clarification of any information that is submitted by any Respondent in any portion of its Proposal or to request additional information at any time during the evaluation process. Any material misrepresentation made by a Respondent may void the Proposal and eliminate the Respondent from further consideration.

The City reserves the right to enlist independent consulting services to assist with the evaluation of all or any portion of the Proposal responses as it deems necessary.

6.2 Evaluation Criteria

In addition, the Evaluation Committee will review the overall responsiveness and completeness of the Proposal with respect to the requirements outlined in this RFP and Respondent's Proposal using the following criteria (not necessarily listed in order of importance):

A. Professional and Technical Competence

1. Ability to provide the Services described in the RFP, including the ability to accommodate elements outlined in the Scope of Services, and the capacity to achieve the project goals, objectives and Scope of Services described in this RFP.
2. Professional qualifications and specialized experience of Respondent and its team relevant to the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago on projects of similar scope and magnitude (e.g., specifically with respect to large organizations and government agencies).
3. Professional qualifications and specialized experience of Respondent's key personnel and local availability of key personnel committed to the City account as shown in Exhibit 7.
4. Past and current performance of respondent (and team members) on other contracts in terms of quality of services and compliance with performance schedules. The Evaluation Committee may solicit from current and/or previous clients including the City, other government agencies, or any available sources, relevant information concerning Respondent's record of performance.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

- B. Quality, comprehensiveness and adequacy of the proposed approach to a purchasing, installing and operating of a bicycle sharing system, including the staffing plan, local availability and commitment of personnel who will manage and oversee the City's account.

The Evaluation Committee will review each proposal for the Respondent's understanding of the objectives of the Services and how these objectives may be best accomplished. Each Respondent will be evaluated on its overall strategy, methodology, and approach to meeting the City's requirements.

- C. Cost Proposal relative to information provided in Exhibit 4.
- D. The level, relevancy and quality of participation by DBE firms and commitment to meeting or exceeding the City's goals for subcontracting with DBE subcontractors certified by the City of Chicago or IDOT. Failure to meet this requirement may be cause for the Respondent to be disqualified. . Consistent with the City's practice of encouraging and facilitating the participation of DBEs in prime contractor roles on City projects, the City urges Respondents to partner with DBE firms at the prime contractor level.

To be eligible for favorable consideration under this element of the criteria, proposed DBE participation on a Respondent's team must include well-defined management roles and responsibilities for the DBE team members and must allocate to the DBE financial risk commensurate with the financial rewards available to be achieved by a successful Respondent.

- E. Legal Actions - The EC will consider legal actions, if any, against Respondent and any division, subsidiary or parent company of Respondent, or against any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation.
- F. Financial Stability – The EC will consider the financial condition of Respondent. Respondent must be financially stable to ensure performance over the duration of the contract.
- G. Compliance with Laws, Ordinances, and Statutes – The EC will consider Respondent's compliance with all laws, ordinances, and statutes governing the contract. See Online City of Chicago EDS Instructions and Attachment A, Online EDS Acknowledgement form in Exhibit 6.
- H. Conflict of Interest – The EC will consider any information regarding Respondent, including information contained in Respondent's Proposal, that may indicate any conflicts (or potential conflicts) of interest which might compromise Respondent's ability to satisfactorily perform the proposed Services or undermine the integrity of the competitive procurement process. If any Respondent has provided any services for the City in researching, consulting, advising, drafting or reviewing of this RFP or any services related to this RFP, such Respondent may be disqualified from further consideration.
- I. Degree to which the Respondent accepts the City's Sample Professional Services Agreement in Exhibit 9 that will impact contract negotiations and City's ability to successfully negotiate and award a contract.

VII SELECTION PROCESS

After the Evaluation Committee ("EC") completes its review of Proposals in Phase II, it may submit to the Commissioner of the Chicago Department of Transportation ("CDOT") a recommended short list of Respondents (Phase III), or the EC may forego Phase III and submit a recommendation to select a Respondent, or a recommendation to reject any or all Proposals.

Phase III- Site Visit and/or Oral Presentations

If the EC submits a short list of Respondents for further review, then, in the sole discretion of the Commissioner of CDOT and the Chief Procurement Officer ("CPO") of the Department of

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Procurement Services, those short-listed Respondents may be subject to a site visit, systems demonstration, and/or invited to appear before the Evaluation Committee for an oral presentation; to clarify in more detail information what was submitted in Respondent's Proposal; and/or to ask Respondent to respond to additional questions. Afterwards, the Evaluation Committee will make a final evaluation, including a final ranking of the Respondents, and will submit a recommendation for one or more Respondents to the Commissioner of CDOT.

The CDOT Commissioner will select one or more Respondents for contract negotiations. Contract negotiations will include clarification and finalization of the scope and agreement on a fair and reasonable cost for Services.

The City will require the selected Respondent(s) to participate in contract negotiations. The City's requirement that the selected Respondent(s) negotiate is not a commitment by the City to award a contract. If the City determines that it is unable to reach an acceptable contract with the selected Respondent(s), including failure to agree on a fair and reasonable cost proposal for the Services or any other terms or conditions, the Commissioner of CDOT may terminate negotiations with the selected Respondent(s), and negotiate with any of the other qualified Respondents, until such time as the City has negotiated a contract meeting its needs.

The City reserves the right to terminate this RFP solicitation at any stage if the CPO determines this action to be in the City's best interests. The receipt of Proposals or other documents will in no way obligate the City to enter into any contract of any kind with any party.

Execution of a contract by the CDOT Commissioner must be authorized by City Council.

VIII ADDITIONAL DETAILS OF THE RFP PROCESS

8.1 Addenda

If it becomes necessary to revise or expand upon any part of this RFP, an addendum will be sent to all of the prospective Respondents listed on the "Take Out Sheet" prior to the Proposal due date. Prospective Respondents are automatically listed when they sign or leave a business card for a copy of the RFP package in the Bid and Bond Room. Each addendum is incorporated as part of the RFP documents, and the prospective Respondent must acknowledge receipt.

Respondents are solely responsible for acquiring the necessary information or materials from the Bid and Bond room.

Copies of the take-out list, and any addenda, are available from the Department of Procurement Services, Bid and Bond Room 301, City Hall, 121 North LaSalle Street, Monday-Friday, 8:30 a.m. - 4:30 p.m.; 312-744-9773; and via the Internet at the Department of Procurement Services website: www.cityofchicago.org/Procurement.

The addendum may include, but will not be limited to, the following:

1. Responses to questions and requests for clarification sent to the Department of Procurement Services according to the provisions of Section 4.1.A herein;
-
- or
2. Responses to questions and requests for clarification raised at the Pre-Proposal Conference or by the deadline for submission of questions.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

8.2 City's Rights to Reject Proposals

The City of Chicago, acting through its Chief Procurement Officer, reserves the right to reject any and all Proposals that do not conform to the requirements set forth in this RFP; or that do not contain at least the information required by Section V. If no Respondent is selected through this RFP process, then the Chief Procurement Officer may utilize any other procurement method available under the Municipal Purchasing Act and the Municipal Code of Chicago, to obtain the Services described here.

8.3 No Liability for Costs

The City is not responsible for costs or damages incurred by Respondents, member(s), partners, subcontractors or other interested parties in connection with the RFP process, including, but not limited to, costs associated with preparing the Proposal and of participating in any conferences, site visits, product /system demonstrations, oral presentations or negotiations.

8.4 Prohibition on Certain Contributions – Mayoral Executive Order No. 2011-4

Pursuant to Mayoral Executive Order No. 2011-4, from the date of public advertisement of this request for qualifications/proposals/information through the date of award of a contract pursuant to this request for qualifications/proposals/information, Respondent, any person or entity who directly or indirectly has an ownership or beneficial interest in Respondent of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Respondent's proposed Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Respondent and all the other preceding classes of persons and entities are together, the "Identified Parties") must not: (a) make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee; (b) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (c) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (d) bundle or solicit others to handle contributions to the Mayor or to his political fundraising committee;

If Respondent violates this provision or Mayoral Executive Order No. 2011-4 prior to the award of an agreement resulting from this request for qualifications/proposals/ information, the Chief Procurement Officer may reject Respondent's proposal.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which is then delivered by one person to the Mayor or to his political fundraising committee.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

1. The partners have been residing together for at least 12 months.
2. The partners have common or joint ownership of a residence.
3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

Any contract awarded pursuant to this solicitation will be subject to and contain provisions requiring continued compliance with Executive Order 2011-4.

8.5 False Statements

(a) 1-21-010 False Statements

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees.

The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code. (Added Coun. J. 12-15-04, p. 39915, § 1)

(b) 1-21-020 Aiding and Abetting.

Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the city for the same penalties for the violation. (Added Coun. J. 12-15-04, p. 39915, § 1)

(c) 1-21-030 Enforcement.

In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of administrative hearings. (Added Coun. J. 12-15-04, p. 39915, § 1)

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

EXHIBIT 1
SCOPE OF SERVICES

**THE PURCHASE, INSTALLATION AND OPERATION OF A BICYCLE SHARING SYSTEM IN
THE CITY OF CHICAGO SERVICES**

The selected Respondent (“Contractor”) must have experience in the sale, installation and operation of a bicycle sharing system. Respondent must provide documentation to support experience in the following areas:

I. Project Overview and Scope

A. Vision

Establishing a bicycle sharing system is one of Mayor Rahm Emanuel’s key strategies to achieve the City’s goal of becoming the most bicycle-friendly city in the United States. A bicycle sharing system will:

- Enhance Chicago’s existing public transportation system by providing bicycles to complete the first and/or last leg of a trip (e.g., from a train station to the workplace).
- Expand the health and wellness benefits of bicycle transportation beyond traditional enthusiast groups to everyone living or working in the City.
- Reduce dependency on automobiles, particularly for short trips, reducing traffic congestion, vehicle emissions, and the demand for parking.

Chicago is the third largest city in the United States, with a population of 2.7 million residents. Chicago’s flat topography, high transit usage, and population density make it an ideal city for a bicycle sharing system.

Chicago currently has 282 miles of bikeways. This includes 125 miles of marked on-street bike lanes and 50 miles of off-street trails. The City will be establishing 100 miles of protected bike lanes by 2015.

The City intends to establish the largest bicycle sharing system in the United States in two phases:

- Phase I – 3000 bicycles (300 stations) in 2012.
- Phase II – 2000 bicycles (200 stations) in 2013 or 2014. Note that Phase II is subject to the availability of funds.

The City reserves the right to expand the system beyond the anticipated number of stations in Phases I and II.

Bicycle stations must be simple, robust, reliable, and designed for both sidewalk and street installation. The overall system must be efficiently managed, and carefully maintained, with bicycles that are evenly and regularly distributed.

The Cost Proposal will reflect that the City will purchase and own the Stations (as defined below), as well as pay for the services necessary to install the Stations. To the extent that there are proprietary technologies the ownership of which will not be transferred, the City must receive a broad license to

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

use, which at a minimum should include a perpetual, transferable, fully paid-up right to use and modify such technologies.

The City seeks to minimize City funds provided for the operation of the bicycle sharing system. Revenues from user fees and memberships are expected to pay the successful Respondent(s) to operate, maintain, and promote the bicycle sharing system.

Operating profits generated by user fees and memberships will be shared by the City and the successful Respondent(s) in a formula to be determined in the negotiation process. The City will be responsible for securing naming rights, sponsorships, and station-based advertising, and will retain these revenues in their entirety.

B. Users

Five types of uses of the bicycle rental system are envisaged:

- Short bicycle trips combined with transit trips.
- Short bicycle trips replacing motor vehicle and/or pedestrian trips.
- Short bicycle trips to areas not well served by public transit.
- Short bicycle trips for fitness and recreational activity.
- Tourist use.

Chicago's bicycle sharing system should be tailored for the following types of trips:

- Regular trips for work, school, shopping, etc., taken by subscribers.
- Spur of the moment trips taken by irregular users and subscribers.
- Trips taken by visitors to Chicago.

C. System Definitions

"Hub" – Contains the racks that hold the bicycles.

"Terminal" – The computer that keeps track of transactions and its support or stand.

"Bicycles" – Specialized bicycles for system use.

"Sign" – Signage alerting people to the presence of the bicycle station; can include maps and advertisements.

"Station" – Hub + Terminal + Bicycles + Sign.

D. System Overview

The system will be designed to allow bicycles to be removed from self-service terminals by two user groups: subscribers and walk-up renters.

It is anticipated that subscribers will be the largest user group. They will use a web page to register, submit credit card data, and execute a user agreement. After registration, subscribers will be able to immediately access a bicycle at any terminal. Subscriptions will last one year with an automatic renewal option. Shorter subscription periods, such daily, three day, weekly, and monthly will also be available.

Walk-up renters will include out-of-town visitors, first-time users, and infrequent users. The system will be designed to allow one-time use by walk-up registration at all or at designated terminals. These designated terminals should enable walk-up renters to register, submit credit card data, and execute a user agreement. Not all terminals need to enable walk-up renters. Terminals in high demand or high profile locations should enable walk-up renters to register.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

The system will be designed to automatically complete financial transactions entered with data input at the web page and terminals. It is the expectation of the City that subscribers who return their bicycle to a terminal within 30 minutes will not be charged. After 30 minutes, charges will be made automatically. These charges should be priced to encourage users to return the bicycles into circulation quickly. If a bicycle is not returned to a terminal within 24 hours or another established time period, and the user has not contacted customer service, the system should automatically deduct a predetermined amount (dependent on bicycle acquisition costs) from the user's credit card account, notify the user via e-mail of the deduction, and, if the user is a subscriber, terminate their subscription.

Bicycles will be designed to be inviting to novice riders. Key features will include one-size-fits-all design, protection from dirt and grease, ease of pedaling and shifting, and high durability.

Back-end operations, maintenance crews, and customer service teams will work to ensure that the bicycles are properly distributed throughout the system at all times, in safe and working condition, and that customer needs are quickly addressed.

E. Implementation Zone

Stations will primarily be located on streets and sidewalks. Stations will be located **on other public property, including transit stations, parks, and educational institutions.** The implementation zone will tend to be in denser areas of Chicago with high transit use and dense commercial and residential development, as well as in popular areas for bicycling. As the Bikesharing program expands it will extend beyond the original implementation zone.

Geographic distribution of stations is important to the City. The City expects to expand the system from high-density areas to include key neighborhood corridors connected to higher density areas with demonstrated potential for high bicycle usage and/or poor access to public transportation.

F. System Size

Stations will be located approximately every 300 meters from the nearest station in most of the **implementation zone**, with stations located no greater than 500 meters from the nearest station in outlying areas or areas with lower demand. The City will be responsible for identifying the **implementation zone**, the locations and densities of stations, with input from the successful Respondent(s).

G. Right-of-Way Commitment

The City will be responsible for obtaining public and private space commitments, securing all required permits and approvals, and paying any fees for the installation of the bicycle stations. The successful Respondent(s) will be expected to suggest best practices, based on their experience installing bicycle stations elsewhere.

H. Ownership

The City shall be the owner of, and hold title to, all equipment purchased by the City. To the extent that there are proprietary technologies, the ownership of which will not be transferred, the City must receive a broad license to use, which at a minimum should include a perpetual, transferable, fully paid-up right to use and modify such technologies.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

II. Bicycle Sharing System Features

The Bicycle Sharing System should minimally meet the System Feature functionality. Respondent is expected to provide a coherent, well thought out plan describing, in detail, how they will meet each of the System Features requirements described in this Scope of Services section. The Elements of the System Features are described as "Required," "Most Desired," and "Desired" and listed below. Respondents that fail to address and/or meet any of the required features will be considered non-responsive and eliminated from further consideration.

- Required:** These features must be provided for the proposal to be deemed responsive.
- Most Desired:** These features are those that the City views as critical to maximizing the success of the Bicycle Sharing program
- Desired:** These features offer opportunities to improve the proposed Bicycle Sharing program, but are not critical to having a successful system
- Instructions:** Respondent(s) are to review and provide its coherent plans to address the "Required," "Most Desired," and "Desired" elements of the features to the Bicycle Sharing System.

A. Business Plan

As stated in the Project Overview and Scope, it is the expectation of the City that it will not have to make any financial contributions towards the operation, maintenance and promotion of its bicycle sharing system given the significant cost to purchase and install the City's bicycle sharing system. To the extent that the system operates at a profit on an annual basis, the City and the successful Respondent(s) will share operating profits generated by user fees and memberships.

The following are general Business Plan features.

Feature	Element	Response
1. Respondents must prepare exhibits with the proposed capital and start-up costs and a pro forma business plan showing the proposed capital costs and the 5 year forecast of all operating costs and revenues for a 5 year period (refer to Exhibits 4).	Required	
2. List the operating expenses to be paid by the City of Chicago and the anticipated revenues to be collected by the City of Chicago. Proposed costs should show the projected direct and indirect costs of providing the proposed service. All profits margin proposed by the respondents should be a part of the proposed performance incentives.	Required	
3. A pricing structure that favors short trips. It is the City's expectation that the first 30 minutes of use will be free to subscribers, with increasing charges thereafter.	Most Desired	
4. The City may request changes to the business plan to meet its programmatic or policy goals.	Most Desired	
5. Assurance of financial sustainability through the term of the contract.	Most Desired	

B. Planning

Respondent must provide a coherent, well thought out plan that address the following Features:

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Feature	Element	Response
1. Plan that determines the following system-wide factors: a. System-wide ratio of bicycle parking spots to bikes of 1.7; b. System-wide ratio of bicycles to stations; c. System-wide ratio of bicycle parking spots per station; d. System-wide number of stations per square mile; e. System-wide average distance between stations; f. System-wide number of subscribers to (in-service) bicycles;	Most Desired	
2. Bicycle availability meets demand. To understand how the plan addresses availability, indicate: a. Total number bicycles in use at a given time during peak hours; b. Percent of total bicycles in use at a given time during peak hours; c. Percentage of stations with no available bicycles during peak hours; d. Percentage of stations with no empty spaces to return a bicycle;	Most Desired	
3. Estimates of the following information related to ridership for years one to five: a. Total trips per year; b. Total subscribers; c. Total average daily users; d. Total average daily trips; e. Total annual users; f. Total average trips by month; g. Total average trips by hour; h. Percentage of total trips originating or terminating within designated districts;	Most Desired	
4. Recommendations for the following information related to rollout, hours and seasonality: a. Single or phased launch; b. Timeline for rollout; c. Year-round versus seasonal system, with cost/benefit analysis for each option; d. Hours of operation (24 hours versus a nighttime shutdown); e. Partial shutdown ability;	Most Desired	
5. Understanding of the successes and challenges of other bicycle sharing systems, particularly in North America.	Most Desired	

C. Performance Metrics

Respondent must provide a coherent, well thought out plan that ensures the following Features:

Feature	Element	Response
1. Stations are neither full nor empty for a period longer than three hours; No more than an average of 10 instances of a station full for longer than 15 minutes per month per station and no more than 30 instances of a station full for longer than 15 minutes at any station in a month.	Required	
2. A minimum of 90% of bicycles are deployed at all times,	Required	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Feature	Element	Response
unless directed otherwise by the City;		
3. A maximum of 1% of the system's bicycles are stolen per year.	Required	
4. 95% of calls to the Call Center are answered within 30 seconds and no more than 5% of calls are dropped;	Required	
5. 95% of emails are answered within 24 hours;	Required	
6. Bicycle station is cleaned a minimum of every 2 weeks or as needed, depending on weather conditions;	Required	
7. Bicycle has a routine maintenance inspection at least once per month;	Required	
8. Graffiti/Vandalism is removed/rectified within 48 hours of notification to the operator;	Required	
9. 95% of membership packages are mailed within 24 hours;	Most Desired	
10. Snow is removed from the sidewalks by stations within 24 hours of a snowfall;	Most Desired	
11. Snow is removed from stations within 24 hours of street snow plowing by stations;	Most Desired	
12. Development of a web-based dashboard and data portal that reports (at a minimum) the following: a. Station Availability – Daily – Instances of full/empty stations by 15 minute increments; b. Station Deployment – Daily – number of stations deployed; c. Bicycle Availability – Daily – number of bicycles deployed for revenue service; d. Bicycle Maintenance – Weekly – number of bicycles serviced; e. Station Cleaning – Weekly - number of stations serviced; f. Graffiti/Vandalism – Weekly – number of incidences of graffiti/vandalism reported and number addressed; g. Customer Service Call Data – number of calls and average call duration per day; h. Calls Dropped – Daily – number and percentage of calls dropped; i. Call Center Responsiveness – Daily – percentage of calls answered in less than 30 seconds; j. Emails – Daily – number of emails received and percentage responded to in 24 hours; k. Ridership by Member Type – Daily – Report the number of rentals and trips by day; l. Trip Duration – Daily – Trip duration by user class in 30 minute increments; m. Miles Traveled – Monthly – Total miles traveled by user class; n. Station Performance – Weekly – Rentals and returns by station; o. Annual Members – Monthly – Weekly – Three Day – New and cumulative members; p. Casual Users – Daily – New and cumulative members.	Most Desired	
13. Refurbishment of the system's bicycles (e.g., paint, logo, sticker removal) on an annual basis, so that they appear new and attractive.	Most Desired	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Feature	Element	Response
14. Development of a user portal that allows users to track: total rentals, top trip pairs, miles traveled, and calories burned;	Desired	
15. Development of a corporate portal that allows corporate members to manage the memberships of employees that receive free/discounted memberships.	Desired	

D. Station

The following are station features.

Feature	Element	Response
1. Compliance with the Americans with Disabilities Act in installing stations.	Required	
2. Stations that are solar powered and wireless, so that pavement excavations to connect to utilities are not required;	Required	
3. Estimate of the useful life of each of the station components and proposed warranty terms;	Required	
4. Adequate space at each terminal for a lighted map indicating both terminal locations and bicycle routes;	Most Desired	
5. Capacity to maintain the security of the system during a power failure event or loss of Internet connection;	Most Desired	
6. For stations that are shut down and removed in the winter, no vertical or sharp objects should be left in the roadway or on the sidewalk that would impede pedestrian travel or restrict the ability to park cars;	Most Desired	
7. Capacity for station and major components (hub, terminal, bicycle) to self-report mechanical problems;	Most Desired	
8. Capacity for users to identify a bicycle that needs repair;	Most Desired	
9. Real-time communication between stations and headquarters particularly to report the number of bicycles at each station and facilitate re-distribution;	Most Desired	
10. Smallest feasible footprint so that stations take a minimum of road or sidewalk space;	Most Desired	
11. No horizontal components that could trip a pedestrian or injure a bicyclist approaching a terminal at night;	Most Desired	
12. Unified look and feel of all stations within the network;	Most Desired	
13. Long expected useful life and high durability of station and station components;	Most Desired	
14. Indicator showing whether the bicycle is available for use or out-of-service (e.g., the bicycle needs repair);	Most Desired	
15. Capacity to issue reports indicating where to rebalance and where bicycles needing repair are located (e.g., the system could signal when terminals are within two bicycles of being full/empty);	Most Desired	
16. Easily movable stations that require minimal time to install and/or remove;	Most Desired	
17. Ability to connect additional stations to existing stations without installing another terminal;	Most Desired	
18. Availability of a backup power source;	Most Desired	
19. Ability to modify or design the system components (hub, terminal, bicycles, and/or sign) to address issues specific to Chicago (e.g., climate, vandalism);	Most Desired	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Feature	Element	Response
20. If wireless Internet connections are used, a system that is highly reliable and secure with encryption for financial data.	Most Desired	
22. Capacity to add lighting where necessary to facilitate nighttime use of the terminal and adjustment of bicycles, and to reduce vandalism;	Desired	
23. Capacity to convey safety information and laws affecting bicyclists;	Desired	
24. Bike map at all stations;	Desired	
25. Capacity to add emergency call buttons, preferably using wireless technology;	Desired	
26. Backlit advertisement on the opposite side of the station map.	Desired	

E. Bicycle

The following are general bicycle features.

Feature	Element	Response
1. One size to fit the majority of the adult population, with seat-only adjustment;	Required	
2. Multiple gears (3 or more);	Required	
3. Front and back lights which turn on automatically when the bicycle is in motion, with lights remaining illuminated for at least 90 seconds when the rider is stopped;	Required	
4. Puncture resistant tires;	Required	
5. Reliable and intuitive braking system;	Required	
6. Theft and tamper resistant (potentially through use of components not compatible with other bicycles and/or requiring tools not commonly available).	Required	
7. Protection from grease, dirt, and tire spray with an enclosed drive train and full fenders;	Most Desired	
8. Corrosion resistant materials with rust-proof external parts;	Most Desired	
9. Cargo capacity for items weighing up to twenty pounds (e.g., briefcase, book bag, and/or grocery bags);	Most Desired	
10. Chainless bicycle or bicycle with a chain-guard;	Most Desired	
11. Light weight (less than 35 pounds);	Most Desired	
12. Capacity for sponsorship or advertising that can be easily changed;	Most Desired	
13. Front, rear, and side reflectors;	Most Desired	
14. Upright riding position allowing for confident riding in traffic;	Most Desired	
15. Easy to operate, easy to mount and to hold in a stopped position, including for shorter riders;	Most Desired	
16. GPS and RFID incorporated into the bicycle design;	Most Desired	
17. Sensors on bicycles to diagnose and self-report mechanical problems.	Most Desired	
18. Useful life greater than three years.	Most Desired	
19. Kickstand or another device to allow the bicycle to be supported upright;	Desired	
20. 5 speeds or more;	Desired	
21. Step-through design.	Desired	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

F. Terminal

The following are general terminal features.

Feature	Element	Response
1. Walk up registration available at all terminals;	Required	
2. Data security, particularly for financial data, user names, and addresses.	Required	
3. Clear and prominent instructions at each terminal directing users who to call in the event of problems;	Most Desired	
4. A process for situations in which a user wants to return a bicycle to a terminal that is full or rent a bicycle from a terminal that is empty;	Most Desired	
5. Automatic confirmation that a subscriber's credit card is valid and has sufficient funds to cover charges if bicycle is not returned, preferably before each bicycle is removed;	Most Desired	
6. Limit on the number of subscriptions and walk-up rentals that can be purchased by one user or using one credit card;	Most Desired	
7. Touch-screen;	Most Desired	
8. Multi-lingual (specify languages proposed);	Most Desired	
9. Terminal accepts major U.S. credit cards and major foreign (non-U.S.) credit cards and/or pin-and-chip credit cards and/or credit cards without a magnetic strip;	Most Desired	
10. Terminal accepts the Chicago Transit Authority (CTA) card;	Most Desired	
11. Useful life greater than five years.	Most Desired	
12. Ability for terminals to be used for other functions (e.g., Bus Rapid Transit payments, accepting parking fees for pay parking spots);	Desired	
13. Capacity to be reprogrammed to serve as a registration station for future automated scooter-share or car-share system and/or serve functions required by the universal hub, namely transactions related to electric charging;	Desired	
14. Ability to disable walk-up registration at times;	Desired	
15. Flexibility to add features and modify terminal as needed;	Desired	
16. Ability to sign up to become subscribers at some or all terminals;	Desired	
17. Ability for credit cards to double as membership cards;	Desired	
18. Ability for subscriptions to be purchased using debit cards;	Desired	
19. Ability for "smart" cards (e.g., college/university IDs) to be used in lieu of membership cards.	Desired	

G. Hub

The following are general hub features.

Feature	Element	Response
1. Modular design, so that the hub can accommodate a range of rental slots (e.g., five, ten, or fifteen bicycles) and adjust capacity after initial construction.	Required	
2. Vandal and theft-deterrent technologies between the hub and the bicycle.	Required	
3. Ability to self-report mechanical problems;	Most Desired	
4. Useful life greater than five years.	Most Desired	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

H. Operations, Maintenance and Rebalancing

The following are general operations, maintenance and rebalancing features.

Feature	Element	Response
1. Development and documentation of a set of maintenance standards for the station and components (hub, terminal, bicycles, and sign), as well as an audit procedure for these standards. Examples include: <ul style="list-style-type: none"> a. Inspecting drive chain for proper functioning and lubrication; b. Inspecting handlebar for proper centering and tightness; c. Inspecting tires for proper inflation; d. Inspecting brakes for excessive wear and ensure proper working order; e. Inspecting saddle for proper tightness; f. Inspecting shifters for proper functioning; g. Inspecting lights for proper functioning; h. Ensuring components such as the basket, bell, and advertisement are properly attached; i. Ensuring that the bicycle is clean, attractive to use; 	Required	
2. In the event that the bicycle rental system is operated during the winter months, an approved system to alert Department of Streets and Sanitation snowplow vehicles to presence of stations. Systems need not be technical. Examples of potential low-tech systems include providing a map to the Department of Streets and Sanitation of the station locations, inserting vertical elements into snow at the stations so plows can identify stations, etc.;	Required	
3. In the event that the bicycle rental system is operated during the winter months, timely removal of snow from all stations when/if stations are operational during snowstorm in accordance with existing snow removal schedules of the City and any other agency or organization;	Required	
4. Operator assumes responsibility for refuse removal and clean-up at all on and off street locations to an agreed upon service level;	Required	
5. Expedited repair and/or replacement of all items needing such services;	Required	
6. Well thought-out redistribution plan that shows a clear understanding of rebalancing issues and ensures a balanced system with minimal likelihood that customers encounter empty or full stations.	Required	
7. Operator assumes responsibility for all costs, repairs, and replacement for damages to stations;	Most Desired	
8. Vehicles used for redistribution of the bicycles should be environmentally friendly;	Most Desired	
9. Provision of spare bicycles to be put into the system to replace bicycles taken out for maintenance or repair;	Most Desired	
10. Dynamic pricing structure and/or other mechanisms to encourage natural system-wide balancing thereby minimizing vehicles needed for rebalancing;	Most Desired	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Feature	Element	Response
11. Ability to expand/contract stations to accommodate large crowds at major events and provide support for up to 15 special events per year.	Most Desired	
12. Green redistribution vehicles that are at least as environmentally friendly as the California standard for highly efficient diesel engines;	Desired	
13. Ability to perform maintenance work on-site;	Desired	

I. Customer Service

The following are general customer services features.

Feature	Element	Response
1. System to immediately aid users with mechanical issues and/or injuries.	Required	
2. Customer service telephone number on every bicycle, with durable, weather resistant labels;	Most Desired	
3. Customer service available 24/7 preferably, otherwise at all hours that rental system is operating;	Most Desired	
4. Adequate staffing to ensure maximum wait time on phone of one minute;	Most Desired	
5. A robust program that ensures the highest customer satisfaction rating and allows the operator to address problems immediately;	Most Desired	
6. A software application enabling mobile phone users to locate their nearest bicycle stations, get directions, and access their web account.	Most Desired	

J. Marketing

The following are general marketing features.

Feature	Element	Response
1. A satisfactory public relations emergency response to address a fatality or serious injury.	Required	
2. Partnership with a local PR firm or committed marketing department to generate significant free and/or paid publicity on local and national television, radio, print, Internet, and other outlets;	Most Desired	
3. Ability to create and manage social media accounts, to keep members abreast of day-to-day operations and special communications;	Most Desired	
4. A well-designed marketing and PR program that generates enthusiasm prior to system launch and has ongoing elements, with a modern theme.	Most Desired	
5. Commitment to conduct semi-annual market research to collect demographic data of users, usage characteristics, and feedback on the customer experience.	Most Desired	
6. A stated financial commitment to marketing.	Desired	

K. Website

The following are general website features.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Feature	Element	Response
1. Data security, especially for financial data, user names, and addresses, that is PCI compliant and that satisfies minimum specifications of the City and any partner;	Required	
2. A mechanism for users to report problems and make suggestions for system improvement;	Required	
3. Real-time communication with stations to track bicycle and hub status;	Required	
4. Access to all registration and travel data with regular reports provided to the City, broken down by district.	Required	
5. Ability for the website to accept and/or allow users to change annual subscriptions, and to automatically renew annual memberships;	Most Desired	
6. Capacity for users to track number of available bicycles and open docking points in each terminal via web page;	Most Desired	
7. Commitment to working with independent "app" developers and/or make available relevant System information (e.g., real time information on the number of bicycles available at stations) for the creation of applications for PDA's, smart phones, web-enabled cell phones etc.;	Most Desired	
8. Interactive map showing status of bicycles at stations, station locations with addresses and directions, and transit information;	Most Desired	
9. Capacity to convey safety information and laws affecting bicyclists (e.g., safety and "rules of the road" videos, an interactive test required to watch before subscribing);	Most Desired	
10. Language options, at a minimum Spanish, on all web pages;	Most Desired	
11. Prominent phone contact information;	Most Desired	
12. Ability to collect survey information and customer satisfaction ratings;	Most Desired	
13. Attractive, appealing, state-of-the-art features.	Most Desired	
14. Personalized customer web pages that provide information such as miles traveled, calories burned, CO ₂ saved, etc;	Desired	
15. Ability to provide members with historical usage data (open source).	Desired	

L. Legal

The following are legal features.

Feature	Element	Response
1. Indemnity to the City for all third party claims against the City related to the use of the Chicago Bicycle Sharing System;	Required	
2. All users sign a legally binding waiver/assumption of risk, either when subscribing via the website or as part of the on-site registration process;	Required	

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

EXHIBIT 2
COMPANY PROFILE INFORMATION

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

EXHIBIT 2
COMPANY PROFILE INFORMATION

Submit a completed company profile information sheet for prime, each joint venture partner and subcontractor(s), as applicable.

- (1) Legal Name of Firm: _____
- (2) Doing Business under Other Company Name?
If yes, Name of Company: _____
- (3) Headquarters Address: _____
- (4) City, State, Zip Code: _____
- (5) Web Site Address: _____
- (6) Proposed Role: Prime Subcontractor/Subconsultant Joint Venture Partner
 Supplier or Other: _____
- (7) Number of Years in Business: _____
- (8) Total Number of Employees: _____
- (9) Total Annual Revenues separated by last 3 full fiscal years: _____
- (10) Major Products and/or Services Offered:
1. _____
2. _____
- (11) Other Products and/or Services: _____
- (12) Briefly describe your firm's approach to providing the purchase, installation and operation of a bicycle sharing system in the City of Chicago:

- (13) Briefly describe your firm's demonstrated experience in purchasing, installing and operating of a bicycle sharing system:

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

EXHIBIT 3
COMPANY REFERENCES/CLIENT PROFILE INFORMATION

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

COMPANY REFERENCES/CLIENT PROFILE INFORMATION

Submit a completed client profile information sheet for each company reference. Provide a minimum of 3 references.

- (1) Client Name: _____
- (2) Address: _____
- (3) City, State, Zip Code: _____
- (4) Project Manager: _____
- (5) Telephone Number: _____
- (6) E-mail: _____
- (7) Number of Employees in Client Organization: _____
Number of Employees dedicated to the Organization: _____
- (8) Project Scope of Services/Goals: _____

- (9) Contract Award Date: \$_____ Cut over Date: _____
- (10) Initial Contract Amount: \$_____ Final Contract Amount: \$_____
- (11) Describe how the client's goals were met. What was the outcome of the project? Attach additional pages, as necessary.

- (12) Discuss significant obstacles to implementation and how those obstacles were overcome:

- (13) Is the client still utilizing your company for the Purchase, Installation and Operation of a Bicycle Sharing System?

- (14) What was the cost/financing structure of the contract?

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

EXHIBIT 4

COST PROPOSAL (per five year contract term)

THE PURCHASE, INSTALLATION AND OPERATION OF A BICYCLE SHARING SYSTEM IN THE CITY OF CHICAGO

Cost Proposal - Template

Respondent must use the provided Template in Exhibit 4 to provide all financial information and assumptions. Such information received in any other format will not be considered and may be cause for the Proposal to be rejected. In addition, Respondent must provide a response that addresses the following element:

- (i) Business Plan:
Prepare exhibits, in the same manner as shown in the pages included in this Exhibit 4, with the proposed capital and start-up costs and a pro forma business plan showing a yearly forecast of all costs and revenues for a 5 year period, in the same manner as shown in the pages included in this Exhibit 4.
- (ii) Revenue Model
Please propose a performance incentive that would be triggered in the event that actual Total Operating Revenues exceed the actual Total Costs (the elements of each as specified in the pages included in this Exhibit 4) and all performance standards delineated in Exhibit 1 Section II (C) are met or exceeded. The proposed performance incentive can vary based on the amount of Total Operating Cash Flow Surplus and the degree to which performance exceeds the aforementioned standards. Please express the performance incentive in terms of percent of Total Operating Revenue that exceeds Total Costs.
- (iii) Pricing Structure
While the Rental Fee Structure is not a required element of the Cost Proposal, the City considers this information as a Most Desired Element would like to review Rental Fee structures that favors short trips. It is the City's expectation that the first 30 minutes of use will be free to subscribers (but not walk up renters), with charges increasing at intervals thereafter.

For purposes of comparing proposals between Respondents, Respondents should not deviate from the forms outlined in Exhibit 4. The City reserves the right to negotiate a final fixed price for Capital and Start-Up Costs and for the final terms and conditions with selected Respondent.

As stated in Exhibit 1 of the RFP, it is the expectation of the City that it will not have to make any financial contributions towards the operation and maintenance of its bicycle sharing system given the significant cost to purchase and install the City's bicycle sharing system. To the extent that the system generates Total Operating Cash Flow Surplus on an annual basis, the City and the successful Respondent(s) will share the Total Operating Cash Flow Surplus after the deduction of an incentive payment, if any.

- Please include a detailed explanation of costs and percentages, as well as comments.
- Provide additional documentation as needed.

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exhibit 4
Proposed Capital and Start-Up Costs
Chicago Bicycle Sharing System

		3000 Bike System	5000 Bike System
	Variable Cost Items		
1	Bicycles		
2	Stations		
4	Installation		
	Fixed Cost		
5	System Start-up		
6	IT Infrastructure		
7	Call Center Set-up		
8	Website Development		
9	Other (itemize)		
10	Total Capital Costs		

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exhibit 4
Pro Forma Business Plan – Year 1 Costs and Revenues
Chicago Bicycle Sharing System

		3000 Bike System	5000 Bike System
1	Operating Costs		
2	Bicycle Redistribution		
3	Customer Support (including call center)		
4	Website Maintenance and Hosting Services		
5	Station Relocations		
6	Other (itemize)		
7	Maintenance Costs		
8	Bicycle Maintenance		
9	Station Maintenance		
10	Facility Rental/lease (repair facility)		
11	IT Systems and Hardware Maintenance (including website)		
12	Maintenance Staff		
13	Other (itemize)		
14	General & Administration Costs		
15	Insurance		
16	Office Lease		
17	Office Administration (all expenses, except staff expense & office lease)		
18	Marketing and Promotions		
19	General & Administrative Staff		
20	Other (itemize)		
21	TOTAL Costs		

		3000 Bike System	5000 Bike System
22	Operating Revenues		
23	Annual Subscriptions		
24	Rental Fees		
25	Daily Passes		
26	3 Day Passes		
27	Weekly Passes		
28	Monthly Passes		
29	Corporate Passes		
30	Institutional Passes		
31	Other (itemize)		
32	TOTAL Operating Revenues		
34	TOTAL Operating Cash Flow Surplus (Shortfall)		

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exhibit 4
Pro Forma Business Plan – Year 2 Costs and Revenues
Chicago Bicycle Sharing System

		3000 Bike System	5000 Bike System
1	Operating Costs		
2	Bicycle Redistribution		
3	Customer Support (including call center)		
4	Website Maintenance and Hosting Services		
5	Station Relocations		
6	Other (itemize)		
7	Maintenance Costs		
8	Bicycle Maintenance		
9	Station Maintenance		
10	Facility Rental/lease (repair facility)		
11	IT Systems and Hardware Maintenance (including website)		
12	Maintenance Staff		
13	Other (itemize)		
14	General & Administration Costs		
15	Insurance		
16	Office Lease		
17	Office Administration (all expenses, except staff expense & office lease)		
18	Marketing and Promotions		
19	General & Administrative Staff		
20	Other (itemize)		
21	TOTAL Costs		

		3000 Bike System	5000 Bike System
22	Operating Revenues		
23	Annual Subscriptions		
24	Rental Fees		
25	Daily Passes		
26	3 Day Passes		
27	Weekly Passes		
28	Monthly Passes		
29	Corporate Passes		
30	Institutional Passes		
31	Other (itemize)		
32	TOTAL Operating Revenues		
34	TOTAL Operating Cash Flow Surplus (Shortfall)		

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exhibit 4
Pro Forma Business Plan – Year 3 Costs and Revenues
Chicago Bicycle Sharing System

		3000 Bike System	5000 Bike System
1	Operating Costs		
2	Bicycle Redistribution		
3	Customer Support (including call center)		
4	Website Maintenance and Hosting Services		
5	Station Relocations		
6	Other (itemize)		
7	Maintenance Costs		
8	Bicycle Maintenance		
9	Station Maintenance		
10	Facility Rental/lease (repair facility)		
11	IT Systems and Hardware Maintenance (including website)		
12	Maintenance Staff		
13	Other (itemize)		
14	General & Administration Costs		
15	Insurance		
16	Office Lease		
17	Office Administration (all expenses, except staff expense & office lease)		
18	Marketing and Promotions		
19	General & Administrative Staff		
20	Other (itemize)		
21	TOTAL Costs		

		3000 Bike System	5000 Bike System
22	Operating Revenues		
23	Annual Subscriptions		
24	Rental Fees		
25	Daily Passes		
26	3 Day Passes		
27	Weekly Passes		
28	Monthly Passes		
29	Corporate Passes		
30	Institutional Passes		
31	Other (itemize)		
32	TOTAL Operating Revenues		
34	TOTAL Operating Cash Flow Surplus (Shortfall)		

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exhibit 4
Pro Forma Business Plan – Year 4 Costs and Revenues
Chicago Bicycle Sharing System

		3000 Bike System	5000 Bike System
1	Operating Costs		
2	Bicycle Redistribution		
3	Customer Support (including call center)		
4	Website Maintenance and Hosting Services		
5	Station Relocations		
6	Other (itemize)		
7	Maintenance Costs		
8	Bicycle Maintenance		
9	Station Maintenance		
10	Facility Rental/lease (repair facility)		
11	IT Systems and Hardware Maintenance (including website)		
12	Maintenance Staff		
13	Other (itemize)		
14	General & Administration Costs		
15	Insurance		
16	Office Lease		
17	Office Administration (all expenses, except staff expense & office lease)		
18	Marketing and Promotions		
19	General & Administrative Staff		
20	Other (itemize)		
21	TOTAL Costs		

		3000 Bike System	5000 Bike System
22	Operating Revenues		
23	Annual Subscriptions		
24	Rental Fees		
25	Daily Passes		
26	3 Day Passes		
27	Weekly Passes		
28	Monthly Passes		
29	Corporate Passes		
30	Institutional Passes		
31	Other (itemize)		
32	TOTAL Operating Revenues		
34	TOTAL Operating Cash Flow Surplus (Shortfall)		

Request for Proposal for the Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exhibit 4
Pro Forma Business Plan – Year 5 Costs and Revenues
Chicago Bicycle Sharing System

		3000 Bike System	5000 Bike System
1	Operating Costs		
2	Bicycle Redistribution		
3	Customer Support (including call center)		
4	Website Maintenance and Hosting Services		
5	Station Relocations		
6	Other (itemize)		
7	Maintenance Costs		
8	Bicycle Maintenance		
9	Station Maintenance		
10	Facility Rental/lease (repair facility)		
11	IT Systems and Hardware Maintenance (including website)		
12	Maintenance Staff		
13	Other (itemize)		
14	General & Administration Costs		
15	Insurance		
16	Office Lease		
17	Office Administration (all expenses, except staff expense & office lease)		
18	Marketing and Promotions		
19	General & Administrative Staff		
20	Other (itemize)		
21	TOTAL Costs		

		3000 Bike System	5000 Bike System
22	Operating Revenues		
23	Annual Subscriptions		
24	Rental Fees		
25	Daily Passes		
26	3 Day Passes		
27	Weekly Passes		
28	Monthly Passes		
29	Corporate Passes		
30	Institutional Passes		
31	Other (itemize)		
32	TOTAL Operating Revenues		
34	TOTAL Operating Cash Flow Surplus (Shortfall)		

EXHIBIT 5

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT AND SCHEDULES

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

Non-Discrimination. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

Note: The Contractor must include the provision set forth in the paragraph above in all of its subcontract agreements.

Compliance. In the performance of this Agreement, including the procurement and lease of materials or equipment, Contractor must abide by the disadvantaged business enterprise commitment requirements and all other requirements set forth in the Disadvantaged Business Enterprises Special Conditions set forth below. Contractor's completed Schedules C-1 and D-1 evidencing its compliance with this requirement are made a part of this Agreement, upon acceptance by the Chief Procurement Officer. Contractor must utilize disadvantaged business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed therein as applied to all payments received from the City.

DBE Financial Institutions. Contractor is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of Contractor's willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's DBE Program document as well as these Special Conditions Regarding Disadvantaged Business Enterprise Commitment, (See Section 12, *ADBE Financial Institutions*) and the Directory of Disadvantaged, Minority and Women-Owned Business Enterprises, copies of which are available at the City of Chicago, Bid and Bond Room, City Hall, Room 301, Chicago, IL 60602 or at the City of Chicago website: www.cityofchicago.org/purchasing.

1. Policy and Terms

- A. It is the policy of the City of Chicago that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, shall have the maximum feasible opportunity to participate fully in the performance of contracts financed under this agreement. Therefore the contractor shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative action to ensure that women and minority owned businesses shall have the maximum feasible opportunity to compete for and perform subcontracts for supplies or services.
- B. Accordingly, the Contractor agrees to expend not less than the following percentages of the total contract price, if awarded, for contract participation by DBEs:

DBE participation goal: 5%

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

C. This commitment may be met by the prime Contractor's status as a DBE, or by a joint venture with one or more certified DBEs, or by subcontracting a portion of the work to one or more certified DBEs, or by the purchase of materials used in the performance of the contract from one or more certified DBEs, or by any combination of the foregoing. The Chief Procurement Officer also has the authority to review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award or \$50,000 whichever is greater for opportunities to increase participation of DBEs already involved in the contract.

2. Definitions

A. **"Disadvantaged Business Enterprise"** or **"DBE"** means a small business concern certified by the City of Chicago or by the Illinois Department of Transportation (IDOT) as a business owned and controlled by socially and economically disadvantaged individuals in accordance with United States Department of Transportation Regulations 49 CFR Part 26.

Note: For FHWA/IDOT funded projects only, DBE certification issued by IDOT is acceptable. A business that has been denied certification or decertified by IDOT will not be able to participate as a DBE prime contractor, subcontractor or joint venture partner on any City awarded contracts funded by the Federal Highway Administration or the Illinois Department of Transportation.

(Copies of the Regulations Governing Certification are available from the Department of Procurement Services, Room 301, 121 N. LaSalle Street, Chicago, Illinois 60602).

B. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The Chief Procurement Officer shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Chief Procurement Officer also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

"Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marinas, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu and Nauru;
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh, Sri Lanka, Bhutan, the Maldives Islands and Nepal;
- (6) "Women."

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

- C. **“Small Business Concern”** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three fiscal years.
 - D. **“Directory”** means the Directory of Certified “Disadvantaged Business Enterprises” “Minority Business Enterprises” and “Women Business Enterprises” maintained and published by the Contract Compliance Administrator. The Directory identifies firms that have been certified as DBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed DBE firms. (Copies of the Directory of Certified DBE/MBE/WBE Businesses are available in the Bid and Bond Room, Room 301, 121 N. LaSalle Street, Chicago, Illinois 60602).
 - E. **“Area of Specialty”** means the description of a DBE firm’s business which has been determined by the Chief Procurement Officer to be most reflective of the DBE firm’s claimed specialty or expertise. Each DBE letter of certification contains a description of the firm’s Area of Specialty. This information is also contained in the Directory. Credit toward this contract’s DBE participation goal shall be limited to the participation of firms performing within their certified Area of Specialty.
- NOTICE:** The Department of Procurement Services does not make any representation concerning the ability of any DBE to perform work within their Area of Specialty. It is the responsibility of all Contractors to determine the capability and capacity of DBE firms to satisfactorily perform the work proposed.
- F. **“Joint Venture”** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Contractors may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between DBE firm(s) and non-DBE firm(s).
- A joint venture is eligible for DBE credit if the DBE partner(s) share in the ownership, control, management responsibilities, risks and profits of the joint venture, and are responsible for a clearly defined portion of work to be performed, in proportion with the DBE ownership percentage.
- G. **“Contract Compliance Administrator”** means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

3. Third Party Challenges to Eligibility of DBE Firm

Any third party may challenge the socially and economically disadvantaged status of any individual presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the City as a DBE (except an individual whose firm has a current 8(a) certification from the Small Business Administration). The challenge shall be made in writing to the City, and shall include all information available to the challenging party relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged. The City will, during its determination of findings, notify the challenged party of the statements and identity of the challenging party, and will notify both parties in writing of the outcome. If the City determines first that there was not reasonable grounds presented in the

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

challenge sufficient to justify an inquiry, then the City will notify the challenger that the proceedings are now terminated. During the pendency of any challenge, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

4. Joint Ventures

Bidders may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between a DBE firm and a non-DBE firm.

A joint venture is eligible if, and only if, all of the following requirements are satisfied:

- i. the DBE venturer(s) share in the (1) ownership, (2) control, (3) management (4) risks and (5) profits of the joint venture in proportion with the DBE ownership percentage;
- ii. the DBE venturer(s) is responsible for a clearly defined portion of work to be performed, in proportion with the DBE ownership percentage; and
- iii. the DBE venturer(s) actually perform (with its own forces and using its own equipment) work equal to at least 50% of the value of its ownership of the joint venture.

For example, if the DBE is proposed as a 25% venturer on a \$1,000,000 contract (or subcontract), the DBE must, in addition to its other joint venture responsibilities, perform work equal to at least \$125,000 (or 50% of 25% of \$1,000,000).

The Chief Procurement Officer will evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. In addition, the Chief Procurement Officer shall consider the record of the joint venturers as joint venturers on City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the Joint Venture shall be final.

Note: Credit for participation by DBEs in joint venture with non-DBEs does not require a minimum participation of 51% in venture ownership and control on the part of the DBE. A junior ownership interest only in the venture by the DBE can be credited toward the contract DBE goal in a *pro rata* fashion (as indicated Section 5. below, “*Counting DBE Participation Toward the Contract Goal*”).

NOTICE: The City requires that, whenever a joint venture is proposed as the prime contractor, each joint venturer must separately sign the proposal to the City, in the following execution pages: TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.

5. Counting DBE Participation Toward the Contract Goals

- A. The inclusion of any DBE in the Contractor's DBE Utilization Plan shall not conclusively establish the Contractor's right to full DBE credit for that firm's participation in the contract.
- B. The Chief Procurement Officer reserves the right to deny or limit DBE credit to the Contractor where any DBE is found to be engaged in substantial subcontracting or pass-through activities with others. In this regard, a Contractor may count toward its DBE goal only expenditures to firms that perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

performance of a clearly defined and distinct element of work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Chief Procurement Officer shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. The amount of DBE participation credit shall be based upon an analysis by the Chief Procurement Officer of the specific duties that will be performed by the DBE. Each DBE shall be expected to perform all of the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment.

- C. Credit for the participation of DBE firms as joint venture partners shall be based upon a detailed analysis of the duties, responsibilities and risks undertaken by the DBE as specified by the joint venture's executed joint venture agreement. The Chief Procurement Officer reserves the right to deny or limit DBE credit to the Contractor where any DBE joint venture partner is found to have duties, responsibilities, risks of loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

6. Procedure to Determine Compliance with Contract Requirements

The following Schedules and described documents constitute the Contractor's DBE proposal, and **must be submitted together with its proposal at the time of bid opening or submission of proposals**, unless stated otherwise:

- A. **Schedule B: Affidavit of DBE/Non-DBE Joint Venture**
Where the Contractor's DBE proposal includes the participation of any DBE as a joint venturer prime or subcontractor, The Contractor's must submit, together with its bid or proposal, a Schedule B: Affidavit of DBE/Non-DBE Joint Venture, with an attached copy of the joint venture agreement proposed among the parties.
- B. **Schedule C-1: Letter of Intent from DBE to Perform as Subconsultant / Subcontractor / Supplier**
A Schedule C-1, executed by the DBE firm (or Joint Venture Subcontractor) must be submitted by the Contractor for each DBE included on their Schedule D-1 Utilization Plan and must accurately detail the work to be performed by the DBE firm and the agreed rates and prices to be paid.
- C. **Schedule D-1: Affidavit of DBE Goal Implementation Plan**
Contractor must submit, prior to contract award, a completed **Schedule D-1** committing them to the utilization of each listed DBE firm. Except in cases where the Contractor has received a complete waiver of the DBE goals in accordance with Section 7. below, "*Grant of Relief for Consultants: Waiver of DBE Goal*," the Contractor must commit to expend a specific percentage of the total dollar value of the contract with each DBE firm included on its **Schedule D-1**. The total dollar commitment to proposed DBE firms must *at least* equal the DBE goal. All commitments made by the Contractor's **Schedule D-1** must conform to those presented in the submitted **Schedule C-1s**.
- D. **Schedule F: Report of Subcontractor/Subconsultant Solicitations**
All Bidders/Proposers must submit, together with their bid/proposal, a completed Schedule F report containing information on all subcontractors, DBEs and non-DBEs, solicited for participation in the contract. The Schedule F shall include the following subcontractor/subconsultant information:
Contractor name; Address; Contact person; DBE status; Type of work solicited
- E. **Letters of Certification**

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

A copy of each proposed DBE firm's current Letter of Certification from the City of Chicago or the Illinois Unified Certification Program must be submitted with the proposal (RFQ or RFP). All Letters of Certification are dated and are valid for one year from date of issue by the City or IDOT. All Letters of Certification issued by the City of Chicago or IDOT include a statement of the DBE firm's Area of Specialty. The DBE firm's scope of work, as detailed by their **Schedule C-1** must conform to their certified Area of Specialty.

F. Joint Venture Agreements

If the Contractor's DBE proposal includes the participation of DBE firm(s) as joint venturers on any tier (either as the Contractor or as a subcontractor), Contractor must provide a copy of the joint venture agreement in addition to a completed **Schedule B**. In order to demonstrate the DBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include *specific details* related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the DBE firm; (3) the commitment of management, supervisory and operations personnel employed by the DBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture; the distribution of funds received from each partner; each partner's authority to expend joint venture funds (e.g. check signing authority) and the details of each partner's joint venture responsibilities.

7. Grant of Relief for Contractors: Waiver of DBE Goal

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the DBE commitment goals of a particular contract is appropriate. If a bidder or proposer determines that it is unable to meet the DBE percentage on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the DBE percentages submitted on the bidder/proposer's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Disadvantaged Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver or reduction request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids/proposals have been opened, the lowest responsive and responsible bidder so deemed by the Chief Procurement Officer or authorized designee will have no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver or reduction described herein. Failure to submit documentation sufficient to support the waiver or reduction request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder/proposer; or readvertising the bid/proposal. All bidders/proposers are encouraged to submit all required documents at the time of bid opening to expedite the contract award.

A. Direct Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

- (1) Bidder/proposer has documented the unsuccessful solicitation for either subcontractors or joint venture partners of DBE firms in an appropriately certified work category to perform any direct work identified or related to the advertised bid/proposal. Direct participation involves subcontracting a portion of the goods/services specifically required in the bid/proposal. Documentation must include but is not necessarily limited to:
 - (a) A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified DBE firms;
 - (b) A listing of all DBE firms contacted that includes:
 - (i) Names, address and telephone numbers of DBE firms solicited;
 - (ii) Date and time of contact;
 - (iii) Method of contact (written, telephone, facsimile transmittal, etc.)
 - (iv) Name of the person contacted.
 - (c) Copies of letters or any other evidence of mailing that substantiates outreach to DBE vendors that includes:
 - (i) Project identification and location;
 - (ii) Classification/commodity of work items for which quotations were sought;
 - (iii) Date, item and location for acceptance of subcontractor bid proposals;
 - (iv) Detailed statement which summarizes direct negotiations with appropriate DBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
 - (v) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve DBE goals by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on DBE subcontractors for the type of work that was solicited.

OR

Subcontractor participation will be deemed excessively costly when the DBE subcontractor proposal exceeds the average price quoted by more than fifteen percent (15%). In order to establish that a subcontracts' quote is excessively costly, the bidder/proposer must provide the following information:

- (a) A detailed statement of the work identified for DBE participation for which the bidder/proposer asserts the DBE quote(s) were excessively costly (in excess of 15% higher).
 - (i) A listing of all potential subcontractors contacted for a quotation on that work item;
 - (ii) Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
- (b) Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the DBE proposals are excessively costly, even though not in excess of 15% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (i) The City's estimate for the work under a specific subcontract;
 - (ii) The bidder/proposer's own estimate for the work under the subcontract;
 - (iii) An average of the bona fide prices quoted for the subcontract;
 - (iv) Demonstrated increase in other contract costs as a result of subcontracting to the DBE or other firm.
 - (v) The City reserves the right to modify this procedure when deemed appropriate.

B. Assist Agency Participation

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

Every waiver and/or reduction request must include evidence that the bidder/proposer has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the DBE business community.

The notice requirement of this Section will be satisfied if a bidder/proposer contacts at least one of the associations on Attachment A to these Regulations when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B to these Regulations provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Chief Procurement Officer or Contract Compliance Administrator may contact the assist agency for verification of notification.

C. Impracticability

- (1) If the Chief Procurement Officer determines that a lesser DBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.
- (2) The requirements set forth in these Regulations shall not apply where the Chief Procurement Officer determines that DBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Procurement Services administrator, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders/proposers, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

8. Reporting Requirements During the Term of the Contract

- A. The Contractor shall, within thirty days of receiving the awarded contract, execute formal contracts or purchase orders with the DBE firms included in their approved Schedule D Utilization Plan. These written agreements shall be made available to the Chief Procurement Officer within 30 days upon execution.
- B. During the term of the contract, the Contractor shall submit regular "DBE Utilization Reports," a copy of which is attached. The frequency with which these reports are to be submitted will be determined by the Chief Procurement Officer, but in no case will reports be required less often than on a quarterly basis. In the absence of written notice from the Chief Procurement Officer, the Contractor's first "DBE Utilization Report" will be due ninety (90) days after the date of contract award, and reports will be due quarterly thereafter.
- C. "DBE Utilization Reports" are to be submitted directly to: Department of Procurement Services, Office of Vendor Relations, City Hall, Room 403, 121 N. LaSalle Street, Chicago, Illinois 60602.

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

9. DBE Substitutions

- A. Arbitrary changes by the Contractor of the commitments earlier certified in the **Schedule D-1** are prohibited. Further, after once entering into each approved DBE subagreement, the Contractor shall thereafter neither terminate the subagreement, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without in each instance receiving the prior written approval of the Chief Procurement Officer.
- B. In some cases, however, it may become necessary to substitute a new DBE in order to actually fulfill the DBE requirements. In such cases, the Chief Procurement Officer must be given reasons justifying the release by the City of prior specific DBE commitments established in the Contractor's Schedule D Utilization Plan. The substitution procedure will be as follows:

The Contractor must notify the Chief Procurement Officer immediately in writing of an apparent necessity to reduce or terminate a DBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the DBE contract goals.

The Contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following examples: A previously committed DBE was found not to be able to perform, or not to be able to perform on time; a committed DBE was found not to be able to produce acceptable work; a committed DBE was discovered later to be not bona fide; a DBE previously committed at a given price later demands an unreasonable escalation of price.

The Contractor's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: A replacement firm has been recruited to perform the same work under terms more advantageous to the Contractor; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); a DBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

The Contractor's notification should include the name, address, and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same DBE affidavits and documents, which are required of Contractors, as enumerated above in Section 6., "*Procedure to Determine Compliance with Contract Requirements*."

The City will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the City will instead respond as soon as practicable.

Actual substitution of a replacement DBE to fulfill contract requirements should not be made before City approval is given for the substitute DBE. Once notified of City approval, the substitute DBE subcontract must be executed within five working days, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

- C. The City will not approve extra payment for escalated costs incurred by the Contractor when a substitution of subcontractors becomes necessary for the Contractor in order to comply with DBE contract requirements.
- D. After award of contract, no relief of the DBE requirements will be granted by the City except in exceptional circumstances. Requests for complete or partial waiver or the DBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Contractor to locate specific firms, solicit DBE proposals, seek assistance from technical assistance agencies, etc., (as outlined in Section 6. above, "*Grant of Relief for Consultants: Waiver of DBE Goal*").
- E. In a case where an enterprise under contract was previously considered to be a DBE but is later found not to be, or whose work is found not to be creditable toward DBE goals fully as planned, the City will consider the following special criteria in evaluating a waiver request:
 - (1) Whether the Contractor was reasonable in believing the enterprise was a DBE or that eligibility or "counting" standards were not being violated;
 - (2) The adequacy of unsuccessful efforts taken to obtain a substitute DBE (as outlined in Section 6. above, "*Grant of Relief for Consultants: Waiver of DBE Goal*").
- F. The Chief Procurement Officer has sole authority regarding all matters of DBE compliance, including the granting of waivers or other relief to Contractors.

10. Non-Compliance

- A. The following constitutes a material breach of this contract and shall entitle the City to declare a default, terminate the contract and exercise those remedies provided for in the contract, at law or in equity:
 - (1) failure to satisfy the DBE percentages required by the contract; and
 - (2) the contractor or subcontractor is disqualified as a DBE, such status was a factor in contract award, and was misrepresented by the contractor.
- B. In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement. Furthermore, continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due to the contractor may be withheld until corrective action is taken.
- C. When the contract requirements are completed, in the event that the City has determined that the contractor was not compliant in the fulfillment of the required DBE goals, and a grant of relief of the requirements was not obtained, the City will thereby be damaged in the failure to provide the benefit of participation to DBEs to the degree set forth in this Special Condition. Therefore, in such case of non-compliance, the City will deduct as liquidated damages cumulative amounts computed as follows:

For each one percent (or fraction thereof) of shortfall toward the DBE goals, one percent of the base bid for this contract shall be surrendered by the Contractor to the City of Chicago in payment as liquidated damages.

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT - Professional Services

11. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to the City of Chicago, Federal or State authorities in this project, the U.S. Department of Justice, or any duly authorized representatives thereof.

12. DBE Financial Institutions

The City of Chicago currently has no certified DBE financial institutions. However, there are several local financial institutions owned and operated by minorities or women, many of which are currently certified with the City as MBEs and/or WBEs.

MBE and/or WBE Certified Institutions:

Community Bank of Lawndale
Highland Bank
Pan American Bank
Seaway National Bank

Minority and/or Female Owned Institutions:

Banco Popular
First Commercial Bank
Illinois Federal Savings Bank

13. Assistance Agencies

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration

500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert Conner
(312) 353-4528

S.B.A. -Bond Guarantee Program /Surety Bonds

500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Gary Peele
(312) 353-7331

S.B.A. - Procurement Assistance

500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert P. Murphy, Assistant Regional Administrator
(312) 353-4503

Project information; general DBE information; Directory of local and out-of-state construction and design DBEs:

City of Chicago

Department of Procurement Services
City Hall-Room 403
Chicago, Illinois 60602
Attention: Supplier Diversity
(312) 744-4900

City of Chicago Web site:

www.cityofchicago.org/procurement

Information on DBE availability in the manufacturing, sales or supplies, and related fields
(direct assistance from 42 regional affiliates located throughout the U.S.):

National Minority Suppliers Development Council, Inc. 1040 Avenue of the Americas - 2nd Floor New York, New York 10018 Attention: Harriet R. Michel (212) 944-2430	Chicago Minority Business Development Council 11 South LaSalle Street - Suite 850 Chicago, Illinois 60603 Attention: Tracey Smith (312) 755-8880
---	--

SCHEDULE B:
Affidavit of DBE/Non-DBE Joint Venture
(FTA, FHWA and FAA Funded Contracts)

Note: If all joint venturers are DBEs, a written joint venture agreement between the DBE venturers may be submitted in lieu of this form. In all proposed joint ventures, each DBE venturer must submit a copy of its current Letter of Certification.

ALL INFORMATION REQUESTED BY THIS SCHEDULE MUST BE ANSWERED IN THE SPACES PROVIDED. DO NOT REFER TO YOUR JOINT VENTURE AGREEMENT EXCEPT TO EXPAND ON ANSWERS PROVIDED ON THIS FORM. IF ADDITIONAL SPACE IS REQUIRED, ADDITIONAL SHEETS MAY BE ATTACHED.

I. Name of joint venture: _____

Address of joint venture: _____

Phone number of joint venture: _____

II. Identify each non-DBE venturer(s): _____

Name of Firm: _____

Address: _____

Phone: _____

Contact person for matters concerning DBE compliance: _____

III. Identify each non-DBE venturer(s): _____

Name of Firm: _____

Address: _____

Phone: _____

Contact person for matters concerning DBE compliance: _____

IV. Describe the role(s) of the DBE venturer(s) in the joint venture:

V. Attach a copy of the joint venture agreement. In order to demonstrate the DBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the DBE's own forces; (3) work items to be performed under the supervision of the DBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What are the percentage(s) of DBE ownership of the joint venture?

DBE ownership percentage(s) _____

Non-DBE ownership percentage(s) _____

B. Specify DBE percentages for each of the following (provide narrative descriptions and other details as applicable):

1. Profit and loss sharing:

2. Capital contributions:

(a) Dollar amounts of initial contribution: _____

(b) Dollar amounts of anticipated on-going contributions: _____

3. Contributions of equipment (specify types and quantities of equipment to be provided by each venturer):

- _____

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: _____

5. Provide copies of all written agreements between venturers concerning this project.
6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

C. Signing, co-signing and/or collateralizing loans:

D. Acquisition of lines of credit:

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

G. Management of contract performance. (identify by name and firm only):

1. Supervision of field operations: _____

2. Major purchases: _____

3. Estimating: _____

4. Engineering: _____

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the "managing partner", if any, and describe the means and measure of their compensation:

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-DBE firm, the DBE firm, or the joint venture.

Trade	Non-DBE Firm (number of employees)	DBE (number of employees)	Joint Venture (number of employees)

Note: If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venturer?
Currently employed by non-DBE (number) _____ Currently employed by DBE _____

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

C. Which venturer will be responsible for the preparation of joint venture payrolls:

X. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

Attach additional sheets as needed

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If there are any changes in the information submitted after filing this Schedule B and before the completion of the joint venture's work on the project, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of DBE Partner Firm

Name of Non-DBE Partner Firm

Signature of Affiant

Signature of Affiant

Name and Title of Affiant

Name and Title of Affiant

Date

Date

On this _____ day of _____, 20 ____, the above-signed officers

_____,
(names of affiants)

personally appeared and, known to me to be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Signature of Notary Public

My Commission Expire: _____

(SEAL)

DBE Professional Services (FTA/FHWA/FAA) SCHEDULE B Rev. 9/10/02 (dlh)

(Rev. 6/06)

SCHEDULE C-1
Letter of Intent from DBE to Perform
as Subconsultant/Subcontractor/Supplier

Name of Project: _____

Specification No. _____

From: _____
(Name of DBE Firm)

To: _____ and the City of Chicago:
(Name of Prime Consultant/Contractor)

The DBE status of the undersigned is confirmed by the attached letter of Certification from the City of Chicago dated _____.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

The above described services or goods are offered for the following price and described terms of payment:

If more space is needed to fully describe the DBE firm's proposed scope of work and/or payment schedule, attach additional sheets.

Conditioned upon your execution of a contract with the City of Chicago, the undersigned will enter into a formal written agreement for the above work with you as a Prime Consultant/Contractor, and will do so within (3) three working days of receipt of a signed contract from the City of Chicago.

(Signature of President, Owner or Authorized Agent)

Name /Title (Print)

Date

Phone

SCHEDULE D-1
Affidavit of DBE Goal Implementation Plan

Project Name: _____

Specification No.: _____

State of _____

County (City) of _____

I HEREBY DECLARE AND AFFIRM that I am the duly authorized representative of:

Name of Prime Consultant/Contractor

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the DBE goal of this contract.

All DBE firms included in this plan have been certified as such by the City of Chicago (Letters of Certification attached).

- I. **DBE Prime Consultant/Contractor.** If prime consultant is a certified DBE firm, attach copy of City of Chicago Letter of Certification.
- II. **DBEs as Joint Venturers.** If prime consultant is a joint venture and one or more joint venture partners are certified DBEs, attach copies of Letters of Certification and a copy of Joint Venture Agreement clearly describing the role of the DBE firm(s) and its ownership interest in the joint venture.
- III. **DBE Subconsultants.** Complete for each DBE subconsultant/subcontractor/supplier.

1. Name of DBE: _____

Address: _____

Contact Person: _____ Phone: _____

Dollar Amount of Participation \$ _____ Percent of Participation: _____ %

2. Name of DBE: _____

Address: _____

Contact Person: _____ Phone: _____

Dollar Amount of Participation \$ _____ Percent of Participation: _____ %

3. Name of DBE: _____

Address: _____

Contact Person: _____ Phone: _____

Dollar Amount of Participation \$ _____ Percent of Participation: _____ %

4. Attach additional sheets as needed.

IV. Summary of DBE Proposal:

<u>DBE Firm Name</u>	<u>Dollar Amount of Participation</u>	<u>Percent Amount of participation</u>
_____	\$ _____	% _____
_____	\$ _____	% _____
_____	\$ _____	% _____
_____	\$ _____	% _____
_____	\$ _____	% _____
Total DBE Participation:	\$ _____	% _____

To the best of my knowledge, information and belief, the facts and representations contained in this Schedule are true, and no material facts have been omitted.

The contractor designates the following person as their DBE Liaison Officer:

Name: _____ Phone Number: _____

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct and that I am authorized, on behalf of the contractor, to make this affidavit.

State of _____ Signature of Affiant (Date)

County of _____

This instrument was acknowledged before me on _____ (date)
 by _____ (name of Affiant)
 as _____ (title of Affiant)
 of _____ (name of party on behalf of whom
 this instrument was executed).

(Seal)

Signature of Notary Public

**SCHEDULE F: Report of Subcontractor Solicitations
FHWA, FTA and FAA Funded Contracts**

Project Name: _____
Specification #: _____

I, _____ on behalf of _____
(Name of reporter) (Prime contractor)

have either personally solicited, or permitted a duly authorized representative of this firm to solicit, work for this contract from the following subcontractors which comprise all DBE and non-DBE subcontractors who bid or quoted price information on this contract:

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? Yes No
Type of Work Solicited _____
Years in Business (if available) _____

Annual Gross Receipts (if available) _____

DBE Construction & Professional Services (FTA/FHWA/FAA) (Rev. 6/8/01(dlh))

DBE UTILIZATION REPORT

Utilization Report No. _____ Specification No. _____

Contract No. _____

Project Name: _____

STATE OF: _____)

COUNTY (CITY) OF: _____)

In connection with the above-captioned contract:

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title - Print or Type)

and duly authorized representative of _____
(Name of Prime Consultant /Contractor - Print or Type)

and that the following Minority and Women Business Enterprises have been contracted with, and have furnished, or are furnishing and preparing materials for, and rendering services stated in the contract agreement.

The following Schedule accurately reflects the value of each MBE/WBE sub-agreement and the amounts of money paid to each to date.

DBE UTILIZATION REPORT

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

Name of Contractor: _____
(Print or Type)

Signature: _____
(Signature of affiant)

Name of Affiant: _____
(Print or Type)

Date: _____
(Print or Type)

State of _____

County (City) of _____

This instrument was acknowledged before me on _____ (date)
by _____ (name/s of person/s)
as _____ (type of authority, e.g., officer, trustee, etc.)
of _____ (name of party on behalf of whom instrument was
executed).

Signature of Notary Public

(Seal)

EXHIBIT 6

**ONLINE CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS) AND APPENDIX A
INSTRUCTIONS**

AND

ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT

**ONLINE CITY OF CHICAGO ECONOMIC DISCLOSURE
STATEMENT AND AFFIDAVIT (EDS) INSTRUCTIONS**

WHEN SUBMITTING YOUR RESPONSE TO THIS REQUEST FOR PROPOSAL (RFP) FOR THE PURCHASE, INSTALLATION AND OPERATION OF A BICYCLE SHARING SYSTEM IN THE CITY OF CHICAGO FOR THE CITY OF CHICAGO, SPECIFICATION NO. 100320-A, THE RESPONDENT SHALL SUBMIT 2 DOCUMENTS: 1) A "CERTIFICATE OF FILING" EVIDENCING COMPLETION OF YOUR ONLINE EDS AND 2) AN EXECUTED ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT SIGNED BY AN AUTHORIZED OFFICER BEFORE A NOTARY.

1. ONLINE EDS FILING

1.1. ONLINE EDS FILING REQUIRED PRIOR TO RESPONSE DUE DATE

The Respondent shall complete an online EDS prior to the response due date. A Respondent who does not file an electronic EDS prior to the response due date may be found non-responsive and its response rejected. If you are unable to complete the online EDS and print a Certificate of Filing prior to the response due date, the City will accept a paper EDS provided written justification is provided explaining your good faith efforts to complete it before the response due date and the reasons why it could not be completed.

NOTE: ALWAYS SELECT THE "CONTRACT" (NOT UPDATE) BOX WHEN COMPLETING AN ONLINE EDS TO ENSURE A NEW CONTRACT SPECIFIC ONLINE EDS IS CREATED RELATED TO THE SOLICITATION DOCUMENT. CLICKING THE UPDATE BOX ONLY UPDATES PREVIOUS EDS INFORMATION.

1.2. ONLINE EDS WEB LINK

The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

1.3. ONLINE EDS NUMBER

Upon completion of the online EDS submission process, the Respondent will be provided an EDS number. Respondent should record this number here:

EDS Number: _____

**1.4. ONLINE EDS CERTIFICATION OF FILING AND ATTACHMENT A, ONLINE EDS
ACKNOWLEDGEMENT**

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing and Attachment A, Online EDS Acknowledgement form with its response. Please insert your Certification of Filing and Attachment A, Online EDS Acknowledgement form following the Cover Letter. See Section 5.3, Item 3, Required Contents of Proposal in the RFP. A Respondent who does not include a signed Certificate of Filing and/or Attachment A, Online EDS Acknowledgement form with its response must provide it upon the request of the Chief Procurement Officer.

1.5. PREPARATION CHECKLIST FOR REGISTRATION

To expedite and ease your registration process, we recommend that you collect the following information prior to registering for an Online EDS user account:

	1. Invitation number, if you were provided an invitation number.
	2. EDS document from previous years, if available.
	3. Email address to correspond with the Online EDS system.
	4. Company Information: <ul style="list-style-type: none"> a. Legal Name b. FEIN/SSN c. City of Chicago Vendor Number, if available. d. Address and phone number information that you would like to appear on your EDS documents. e. EDS Captain. Check for an EDS Captain in your company - this maybe the person that usually submits EDS for your company, or the first person that registers for your company.

1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION

To expedite and ease your EDS submission, we recommend that you collect the following information prior to updating your EDS information online.

Items #1 through #7 are needed for both EDS information updates and contract related EDS documents:

- _____ 1. Invitation number, if you were provided with an invitation number.
- _____ 2. Site address that is specific to this EDS.
- _____ 3. Contact that is responsible for this EDS.
- _____ 4. EDS document from previous years, if available.
- _____ 5. Ownership structure, and if applicable, owners' company information:
 - a. % of ownership
 - b. Legal Name
 - c. FEIN/SSN
 - d. City of Chicago Vendor Number, if available.

- _____ e. Address
- _____ 6. List of directors, officers, titleholders, etc. (if applicable).
- _____ 7. For partnerships/LLC/LLP/Joint ventures, etc.:
 - _____ a. List of controlling parties (if applicable).

Items #8 and #9 are needed ONLY for contract related EDS documents:

- _____ 8. Contract related information (if applicable):
 - _____ a. City of Chicago contract package
 - _____ b. Cover page of City of Chicago bid/solicitation package
 - _____ c. If EDS is related to a mod, then cover page of your current contract with the City.
- _____ 9. List of subcontractors and retained parties:
 - _____ a. Name
 - _____ b. Address
 - _____ c. Fees – Estimated or paid

1.7. EDS FREQUENTLY ASKED QUESTIONS

Q: Where do I file?

A: The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

Q: How do I get help?

A: If there is a question mark on a page or next to a field, click on the question mark for help filling out the page or field. You may also consult the User Manual and the Training Videos available on the left menu.

Q: Why do I have to submit an EDS?

A: The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council, City department or other City agency approval. For example, all bidders seeking a City contract are required to submit an EDS. Through the EDS, applicants make disclosures required by State law and City ordinances and certify compliance with various laws and ordinances. An EDS is also required of certain parties related to the applicant, such as owners and controlling parties.

Q: Who is the Applicant?

A: "Applicant" means any entity or person making an application to the City for action requiring City Council or other City agency approval. The applicant does not include owners and parent companies.

Q: Who is the Disclosing Party?

A: "Disclosing Party" means any entity or person submitting an EDS. This includes owners and

parent companies.

Q: What is an entity or legal entity?

A: "Entity" or "Legal Entity" means a legal entity (for example, a corporation, partnership, joint venture, limited liability company or trust).

Q: What is a person for purposes of the EDS?

A: "Person" means a human being.

Q: Who must submit an EDS?

A. An EDS must be submitted in any of the following three circumstances:

Applicants:	An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.
Entities holding an interest:	Whenever a legal entity has a beneficial interest (E. G. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.
Controlling entities:	Whenever a Disclosing Party is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture that has a general partner, managing member, manager or other entity that can control the day-to-day management of the Disclosing Party, that entity must also file an EDS on its own behalf. Each entity with a beneficial interest of more than 7.5% in the controlling entity must also file an EDS on its own behalf.

Q: What information is needed to submit an EDS?

A: The information contained in the Preparation Checklist for EDS submission.

Q: I don't have a user ID & password. Can I still submit an Online EDS?

A: No. You must register and create a user ID and password before submitting an Online EDS.

Q: What information is needed to request a user ID & password for Online EDS?

A: The information contained in the Preparation Checklist for Registration is needed to request a login for the Online EDS.

Q: I already have a username and password from another City web site (City Web Portal, Department of Construction and Permits, Department of Consumer Services, etc.). Can I log-in the Online EDS with that account?

A: Usually not. The Online EDS uses a user ID and password system that is shared by the Public Vehicle Advertising and Water Payment web sites. You may use a username and

password from those sites by answering “Yes” to “Is this an existing City of Chicago user ID?” when registering. Other usernames and passwords will not be automatically recognized. However, you may choose to create an identical username for the Online EDS if it is not already taken.

Q: I don't have an email address. How do I submit an Online EDS?

A: You cannot get an account to submit an online EDS without an email address. If you need an e-mail address, we suggest that you use a free internet email provider such as www.hotmail.com or www.yahoo.com or rnail.google.com to open an account. The City does not endorse any particular free internet email provider. Public computers are available at all Chicago Public Library branches.

Q: I forgot my user ID. Can I register again?

A: No. If you are the EDS Captain of your organization, please contact the Department of Procurement Services at 312-744-4900. If you are an EDS team member, contact your EDS Captain, who can look up your user ID.

Q: Who is the EDS Captain?

A: The EDS Captain is a person who performs certain administrative functions for an organization which files an EDS. Each organization registered with the Online EDS has at least one EDS Captain. There may be co-captains, who are all equal. EDS Captains approve new users, change contact information for an organization, and de-active accounts of employees who have left the organization. Please see the User Manual for more information.

Q: Why do we need EDS Captains?

A: The Online EDS is designed to be a self-service web application which allows those doing or seeking to do business with the City to perform as many routine functions as possible without City intervention. Because many organizations have multiple staff filing an EDS, the EDS Captain role allows those organizations to self-manage the contact information and users.

Q: Who is the EDS team?

A: The EDS team for an organization is everyone who is registered to file an EDS on behalf of the organization.

Q: I forgot my password. What should I do?

A: To retrieve a temporary password, click the “Forgot your password?” link on the login page. Enter your user ID that you provided when you registered your account. The system will automatically generate a temporary password and send it to you. When you log-in with your temporary password, you will be asked to create a new password.

Q: How do I complete an Online EDS?

A: Click on “Create New” after logging in. The Online EDS system will walk you through the EDS questions. Please see the User Manual for details.

Q: How do I fill out a Disclosure of Retained Parties?

A: There is no longer a separate Disclosure of Retained Parties filing. After logging in, click on “Create New”. Answer (click) “Contract” to “Is this EDS for a contract or an EDS information

update?" Click "Fill out EDS", and click on the "Retained Parties" tab. When finished, click on "Ready to Submit."

Q: How do I attach documents?

A: Attachments are discouraged. If at all possible, please provide a concise explanation in the space provided in the online form. Attachments with pages of officers are not acceptable. Names of officers must be typed into the system. If you must provide an attachment for another reason, please send it to your City of Chicago contact (contract administrator or negotiator for procurements) and they will attach it for you. Documents can be sent in PDF (preferred), Word, or paper format.

Q: Who can complete an Economic Disclosure Statement online?

A: Any authorized representative of your business with a user ID and password can complete your EDS online. One person, such as an assistant, can fill in the information and save it, and another person can review and electronically sign the Online EDS.

Q: What are the benefits of filing my Economic Disclosure statement electronically?

A: Filing electronically reduces the chance of filing an incomplete EDS and speeds up the processing of contract awards. A certificate of filing can be printed at the completion of the process and inserted into your bid package. The biggest benefit for those who frequently do business with the City is that after the first EDS, each EDS is much easier to fill out because non-contract specific information is pre-filled from the last submitted EDS.

Q: Will my information be secure?

A: Yes. When making your internet connection to our Web Server, you will connect through a Secure Socket Layer (SSL for short) to the "Online EDS" login page. All information you type will be protected using strong encryption. Within the login page, you will provide us with a user ID, password, and secret question for user authentication. Only you will have knowledge of this unique identification information.

Q: I am filing electronically. How do I sign my EDS?

A: Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

Q: My address has changed. How can I update my information?

A: You must be an EDS Captain for your organization to update this. Log-in and click on "Vendor Admin, Site Administration." Select the appropriate site and click edit.

Q: I have more questions. How can I contact the Department of Procurement Services?

A: Please contact the contract administrator or negotiator assigned to your solicitation or contract. You may call DPS at 312-744-4900 between 8:30 AM and 5:00 PM Central Standard Time.

Q: Can I save a partially complete EDS?

A: Yes. Click "Save". To avoid data loss, we recommend you save your work periodically while

filling out your EDS.

Q: Do I have to re-type my information each time I submit an EDS?

A: No. The system will remember non-contract specific information from your last submitted EDS for one year. This information will be filled-in for you in your new EDS. You will have an opportunity to correct it if it has changed since your last filing. When you submit your new EDS, the information is saved and the one-year clock begins running anew.

Q: What are the system requirements to use the Online EDS?

A: The following are minimum requirements to use the Online EDS:

- A PDF viewer such as Adobe Reader is installed and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at www.adobe.com/products/reader/
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.
- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

The Online EDS has been tested on Internet Explorer 6.0 and 7.0 and Firefox 2.0 and 3.0 on Windows XP and Mac OS X. Although it should work on other browsers and operating systems, the City of Chicago cannot guarantee compatibility.

ATTACHMENT A

ONLINE EDS ACKNOWLEDGEMENT

The undersigned, hereby acknowledges having received Specification No. 100320-A containing a full set of RFP Documents, including, Addenda Numbers (none unless indicated here) _____, and affirms that the Respondent shall be bound by all the terms and conditions contained in the RFP Documents, regardless of whether a complete set thereof is attached to this response.

Under penalty of perjury, the undersigned: (1) warrants that he/she was authorized to submit an EDS on behalf of the Disclosing Party on-line, (2) warrants that all certifications and statements contained in the EDS are true, accurate and complete as of the date the EDS was submitted on-line, and (3) further warrants that, as of the date of submission of this response, there have been no changes in circumstances since the date that the EDS was submitted that would render any certification in the EDS false, inaccurate or incomplete.

Further, the undersigned being duly sworn deposes and says on oath that no disclosures of ownership interests have been withheld and the information provided therein to the best of its knowledge is current and the undersigned has not entered into any agreement with any other respondent or prospective respondent or with any other person, firm or corporation relating to the price named in this proposal or any other proposal, nor any agreement or arrangement under which any act or omission in restraining of free competition among respondents and has not disclosed to any person, firm or corporation the terms of this proposal or the price named herein.

COMPANY NAME: _____
(Print or Type)

AUTHORIZED OFFICER SIGNATURE: _____

TITLE OF SIGNATORY: _____
(Print or Type)

BUSINESS ADDRESS: _____
(Print or Type)

State of _____ (Affix Corporate Seal)

County of _____

This instrument was acknowledged before me on this _____ day of _____, 20____ by
_____ as President (or other authorized officer) and
_____ as Secretary of _____ (Company Name)

Notary Public Signature: _____ (Seal)

EXHIBIT 7

KEY PERSONNEL

Table of Key Personnel

Name	Title	Experience

EXHIBIT 8

INSURANCE REQUIREMENTS AND INSURANCE CERTIFICATE

PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

Chicago Department of Transportation

The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago

Specification No.: 100320-A

The Contractor must provide and maintain at Contractor's own expense, until Contract completion and during the time period following completion if Contractor is required to perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Contract.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Contract and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations explosion, collapse, underground, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for the Contractor must maintain limits of not less than \$1,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

Subcontractors performing work for the Contractor must maintain limits of not less than \$1,000,000 with the same terms herein.

4) Property All Risk

The Contractor must maintain All Risk Property Insurance at full replacement cost covering all loss, damage or destruction to the machinery, equipment, bicycles, stations and/or any facility/property (if applicable) including improvements and betterments. The City of Chicago is to be named as an additional insured and loss payee.

The Contractor is responsible for all loss or damage to City property and to personal property of Contractor (including bicycles, materials, equipment, stations, fixtures and contents) that are part of this Contract.

5) Professional Liability

When any architects, engineers, EDP professionals, project managers/ administrators or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6) Valuable Papers

When any plans, designs, drawings, specifications, media, data, reports, records and any other documents are produced or used under this Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) Blanket Crime

The Contractor must provide Blanket Crime coverage covering all persons handling funds under this Contract, against loss by dishonesty, robbery, burglary, theft, destruction, or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit must be written to cover losses in the amount of maximum monies collected, received and in the possession of Contractor at any given time.

B. ADDITIONAL REQUIREMENTS

The Contractor must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 403, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Contract award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the City to obtain certificates or other insurance evidence from Contractor is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor must advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the

Contract, and the City retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Contractor must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

If Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Contractor must require all subcontractors to provide the insurance required herein, or Contractor may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Contract.

If Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Contract to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

Named Insured: _____
 Address: _____
 (Number and Street)
 (City) (State) (ZIP)

Specification #: _____
 RFQ #: _____
 Project Name #: _____
 Purchase Order #: _____

Description of Operation/Location	
-----------------------------------	--

The insurance policies and endorsements indicated below have been issued to the designated named insured with the policy limits as set forth herein covering the operation described within the Contract involving the named insured and the City of Chicago. The Certificate issuer agrees that in the event of cancellation, non-renewal or material change involving the indicated policies, the issuer will provide at least sixty (60) days prior written notice of such change to the City of Chicago at the address shown on this Certificate. This certificate is issued to the City of Chicago in consideration of the Contract entered into with the named insured, and it is mutually understood that the City of Chicago relies on this certificate as a basis for continuing such agreement with the named insured:

Type of Insurance	Insurer Name	Policy Number	Expiration Date	Limits of Liability All Limits in Thousands
[] Claims made [] Occurrence [] Premises-Operations [] Explosion/Collapse Underground [] Products/Completed-Operations [] Blanket Contractual [] Broad Form Property Damage [] Independent Contractors [] Personal Injury [] Pollution				CSL Per Occurrence \$ _____ General Aggregate \$ _____ Products/Completed Operations Aggregate \$ _____
Automobile Liability				CSL Per Occurrence \$ _____
[] Excess Liability [] Umbrella Liability				Each Occurrence \$ _____
Worker's Compensation and Employer's Liability				Statutory/Illinois Employers Liability \$ _____
Builders Risk/Course of Construction				Amount of Contract
Professional Liability				\$ _____
Owner Contractors Protective				\$ _____
Other				\$ _____

- a) Each Insurance policy required by this agreement, excepting policies for worker's compensation and professional liability, will read: "The City of Chicago is an additional insured as respects operations and activities of, or on behalf of the named insured, performed under contract with or permit from the City of Chicago."
- b) The General, Automobile and Excess/Umbrella Liability Policies described provide for severability of Interest (cross liability) applicable to the named insured and the City.
- c) Workers Compensation and Property Insurers shall waive all rights of subrogation against the City of Chicago.
- d) The receipt of this certificate by the City does not constitute agreement by the City that the insurance requirements in the Contract have been fully met, or that the insurance policies indicated by this certificate are in compliance with all contract requirements.

Name and Address of Certificate Holder and Recipient of Notice Certificate Holder/Additional Insured City of Chicago Department of Procurement Services 121 N. LaSalle St., #403 Chicago, IL 60602	Signature of Authorized Rep. _____ Agency/Company: _____ Address: _____ Telephone: _____
---	---

For City use only

Name of City Department requesting certificate: (Using Dept.): _____

Address: _____ ZIP Code: _____ Attention: _____

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

EXHIBIT 9

CITY OF CHICAGO
SAMPLE PROFESSIONAL SERVICES AGREEMENT

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Contract (PO) No _____
Specification No. _____
Vendor No. _____

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF CHICAGO
DEPARTMENT OF _____

AND

(Company Name)



(Subject of Agreement)

RAHM EMANUEL
MAYOR

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

PROFESSIONAL SERVICES AGREEMENT

TABLE OF CONTENTS

AGREEMENT	1
BACKGROUND INFORMATION	1
ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION	1
ARTICLE 2. DEFINITIONS.....	1
2.1 Definitions	1
2.2 Interpretation	2
2.3 Incorporation of Exhibits	2
ARTICLE 3. DUTIES AND RESPONSIBILITIES OF CONSULTANT	2
3.1 Scope of Services.....	2
3.2 Deliverables	3
3.3 Standard of Performance.....	3
3.4 Personnel.....	3
3.5 Minority and Women's Business Enterprises Commitment	4
3.6 Insurance	4
3.7 Indemnification	4
3.8 Ownership of Documents.....	5
3.9 Copyright Ownership	5
3.10 Records and Audits	6
3.11 Confidentiality.....	7
3.12 Assignments and Subcontracts.....	8
ARTICLE 4. DURATION OF AGREEMENT.....	9
4.1 Term of Performance.....	9
4.2 Timeliness of Performance	9
4.3 Agreement Extension Option	9
ARTICLE 5. COMPENSATION	9
5.1 Basis of Payment.....	9
5.2 Method of Payment	10
5.3 Invoices.....	10
5.4 Taxes	10
5.5 Funding	11
5.6 Non-Appropriation	11
5.7 Subcontractor Payments	11
ARTICLE 6. DISPUTES	11
ARTICLE 7. COMPLIANCE WITH ALL LAWS.....	12
7.1 Compliance with All Laws Generally	12
7.2 Nondiscrimination	12
7.3 Inspector General	13
7.4 Office of Compliance	13
7.5 MacBride Ordinance	14
7.6 Business Relationships with Elected Officials.....	14
7.7 Chicago "Living Wage" Ordinance	14
7.8 Environmental Warranties and Representations.....	15
7.9 Prohibition on Certain Contributions.....	16
7.10 Firms Owned or Operated by Individuals with Disabilities.....	17
7.11 Deemed Inclusion.....	17
7.12 False Statements.....	17

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

ARTICLE 8.	SPECIAL CONDITIONS	18
8.1	Warranties and Representations.....	18
8.2	Ethics	19
8.3	Joint and Several Liability	19
8.4	Business Documents	19
8.5	Conflicts of Interest.....	19
8.6	Non-Liability of Public Officials	20
8.7	EDS / Certification Regarding Suspension and Debarment	20
ARTICLE 9.	EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET	20
9.1	Events of Default Defined.....	21
9.2	Remedies	21
9.3	Early Termination	23
9.4	Suspension	23
9.5	Right to Offset	23
ARTICLE 10.	GENERAL CONDITIONS	24
10.1	Entire Agreement	24
10.2	Counterparts	25
10.3	Changes, Modifications, and Amendments	25
10.4	Governing Law and Jurisdiction	25
10.5	Severability.....	25
10.6	Assigns	25
10.7	Cooperation.....	26
10.8	Waiver.....	26
10.9	Independent Contractor	26
10.10	Electronic Ordering and Invoices	27
10.11	Participation by Other Local Government Agencies.....	27
ARTICLE 11.	NOTICES	28
ARTICLE 12.	AUTHORITY	28
CONTRACT SIGNATURE PAGE		30

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

List of Exhibits

- | | |
|------------|---|
| EXHIBIT 1 | SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE |
| EXHIBIT 2 | SCHEDULE OF COMPENSATION |
| EXHIBIT 3 | SPECIAL CONDITIONS REGARDING DBE COMMITMENT AND SCHEDULES |
| EXHIBIT 4 | ONLINE ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT CERTIFICATE OF
FILING |
| EXHIBIT 5 | INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE |
| EXHIBIT 6 | CONTRACTUAL REQUIREMENTS RELATED TO HIPAA |
| EXHIBIT 7 | LIST OF KEY PERSONNEL |
| EXHIBIT 8 | PROVISIONS REQUIRED IF FEDERAL FUNDS ARE INVOLVED |
| EXHIBIT 9 | SAMPLE CONTRACTORS PERFORMANCE & PAYMENT BOND |
| EXHIBIT 11 | PUBLIC WORK PROVISIONS |
| EXHIBIT 12 | REQUIRED FEDERAL PROVISIONS |

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

AGREEMENT

This Agreement is entered into as of the _____ day of _____, ____ ("Effective Date") by and between _____, a _____ corporation ("Contractor"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of _____ ("City"), at Chicago, Illinois. The City and Contractor agree as follows:

BACKGROUND INFORMATION

The Contractor warrants that it is ready, willing and able to perform as of the effective date of this Agreement to the full satisfaction of the City.

NOW, THEREFORE, the City and the Contractor agree as follows:

ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

TERMS AND CONDITIONS

ARTICLE 2. DEFINITIONS

2.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"Additional Services" means those services, which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 3.1, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 10.3 of this Agreement before Contractor is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"Agreement" means this Professional Services Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his behalf.

"Commissioner" means the Commissioner of the Department of _____, and any representative authorized in writing to act on the Commissioner's behalf.

"Department" means the City Department of _____.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

"Services" means, collectively, the services, duties and responsibilities described in Article 3 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person or entity with whom Contractor contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, suppliers and materials providers, whether or not in privity with Consultant.

2.2 Interpretation

(a) The term "**include**" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.

(f) All references to a number of days mean calendar days, unless indicated otherwise.

2.3 Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

Exhibit 1	Scope of Services and Time Limits for Performance
Exhibit 2	Schedule of Compensation
Exhibit 3	Special Conditions Regarding DBE Commitment and Schedules
Exhibit 4	Online Economic Disclosure Statement and Affidavit Certificate of Filing
Exhibit 5	Insurance Requirements and Evidence of Insurance
Exhibit 6	Contractual Requirements Related to HIPAA
Exhibit 7	List of Key Personnel
Exhibit 8	Provisions Required If Federal Funds Are Involved
Exhibit 9	Sample Contractors Performance & Payment Bond
Exhibit 11	Public Work Provisions
Exhibit 12	Required Federal Provisions

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF CONTRACTOR

3.1 Scope of Services

This description of Services is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement. Contractor must provide the Services in accordance with the standards of performance set forth in Section 3.3. The Services that Contractor must provide are described in Exhibit 1, Scope of Services and Time Limits for Performance.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

3.2 *Deliverables*

In carrying out its Services, Contractor must prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.1.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its obligations under this Agreement.

3.3 *Standard of Performance*

Contractor must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a Contractor performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or Deliverables or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor under this Agreement, at law or in equity.

Contractor must be appropriately licensed to perform the Services, if required by law, and must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If Contractor fails to comply with the foregoing standards, Contractor must, at the City's option, perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure, unless the reason is failure to have and maintain required licensure. See subsection 9.1 (b)(ii) regarding failure to comply with licensure requirements.

3.4 *Personnel*

(a) *Adequate Staffing*

Contractor must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Contractor must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Contractor to the City and with prior written consent of the City.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(b) Key Personnel

Contractor must not reassign or replace Key Personnel without the written consent of the City. "**Key Personnel**" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 3.4(b). The Department may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor must immediately suspend the key person or persons from performing Services under this Agreement and must replace him or them in accordance with the terms of this Agreement. Key Personnel, if any, are identified in Exhibit 7.

(c) Salaries and Wages

Contractor and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Contractor underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Contractor, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Contractor to the respective employees to whom they are due. The parties acknowledge that this Section 3.4(c) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

3.5 Disadvantaged Business Enterprise Commitment

In the performance of this Agreement, including the procurement and lease of materials or equipment, Contractor must abide by the contracting requirements regarding disadvantaged business enterprises (DBE) as defined and discussed in 49 CFR Part 26 and the Special Conditions Regarding DBE Commitment set forth in Exhibit 3. Contractor's completed Schedules C-1 and D-1 in Exhibit 3, evidencing its compliance with this requirement, are a part of this Agreement, upon acceptance by the Chief Procurement Officer. Contractor must utilize minority and women's business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed in them as applied to all payments received from the City.

3.6 Insurance

Contractor must provide and maintain at Contractor's own expense, during the term of this Agreement and any time period following expiration if Contractor is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement.

3.7 Indemnification

(a) Contractor must defend, indemnify, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:

- (i) injury, death or damage of or to any person or property;
- (ii) any infringement or violation of any property right (including any patent, trademark or copyright);

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(iii) Contractor's failure to perform or cause to be performed Contractor's promises and obligations as and when required under this Agreement, including Contractor's failure to perform its obligations to any Subcontractor;

(iv) the City's exercise of its rights and remedies under Section 9.2 of this Agreement; and

(v) injuries to or death of any employee of Contractor or any Subcontractor under any workers compensation statute.

(b) "Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Contractor's breach of this Agreement or to Contractor's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.

(c) At the City Corporation Counsel's option, Contractor must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Contractor of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

(d) To the extent permissible by law, Contractor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses, including any claim by any employee of Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

(e) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Contractor's performance of Services beyond the term. Contractor acknowledges that the requirements set forth in this section to defend, indemnify, and hold harmless the City are apart from and not limited by the Contractor's duties under this Agreement, including the insurance requirements in Exhibit 5 of this Agreement.

3.8 Ownership of Documents

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Contractor under this Agreement are property of the City, including, as further described in Section 3.9 below, all copyrights inherent in them or their preparation. During performance of its Services, Contractor is responsible for any loss or damage to the Deliverables, data, findings or information while in Contractor's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Contractor. If not restorable, Contractor must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 3.7.

3.9 Copyright Ownership

Contractor and the City intend that, to the extent permitted by law, the Deliverables to be produced by Contractor at the City's instance and expense under this Agreement are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. '101 *et seq.*, and that the City will be the sole copyright owner of the

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," Contractor hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Contractor will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Contractor warrants to the City, its successors and assigns, that on the date of transfer Contractor is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Contractor further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Contractor warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

3.10 Records and Audits

(a) Records

(i) Contractor must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. If Contractor fails to make such delivery upon demand, then Contractor must pay to the City any damages the City may sustain by reason of Contractor's failure.

(ii) Contractor must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement. Contractor must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 11.

(b) Audits

(i) Contractor and any of Contractor's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and cost of the Services. Contractor must maintain records showing actual time devoted and costs incurred. Contractor must keep books, documents, papers, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.

(ii) To the extent that Contractor conducts any business operations separate and apart from the Services required under this Agreement using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then Contractor must maintain and make similarly available to the City detailed records supporting Contractor's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

(iii) Contractor must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(iv) No provision in this Agreement granting the City a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents which the City would have had in the absence of such provisions.

(v) The City may in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an Audited period.^a If, as a result of any such audit, it is determined that Contractor or any of its Subcontractors has overcharged the City in the audited period, the City will notify Contractor. Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges and also some or all of the cost of the audit, as follows:

A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Agreement prices, of the goods, work, or Services provided in the audited period, then the Contractor must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Agreement prices, of the goods, work, or Services provided in the audited period, then Contractor must reimburse the City for the full cost of the audit and of each subsequent audit.

Failure of Contractor to reimburse the City in accordance with subsection A or B above is an event of default under Section 9.1 of this Agreement, and Contractor will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

3.11 Confidentiality

(a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Contractor must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Contractor by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

(b) Contractor must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.

(c) If Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Contractor's possession by reason of this Agreement, Contractor must immediately give notice to the Commissioner and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d) HIPAA and AIDS Confidentiality Act. To the extent not defined here the capitalized terms below and in Exhibit 6 will have the same meaning as set forth in the Health Insurance Portability and

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Accountability Act (Act). See 45 CFR parts 160, 162 and 164. Contractor and all its Subcontractors must comply with the Act and all rules and regulations applicable to it including the Privacy Rule, which sets forth the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164 subparts A and E; the Standards for Electronic Transactions, which are located at 45 CFR parts 160 and 162 and the Security Standards, which are located at 45 CFR parts 160, 162 and 164. Contractor must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Contractor fails to comply with the applicable provisions under the ACT or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided.

Additionally, if Contractor is a Business Associate it must comply with all requirements of the Act applicable to Business Associates including the provisions contained in Exhibit 6.

3.12 Assignments and Subcontracts

(a) Contractor must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Chief Procurement Officer and the Department. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Chief Procurement Officer, including approvals for the use of any Subcontractors, operate to relieve Contractor of any of its obligations or liabilities under this Agreement.

(b) All Subcontractors are subject to the prior approval of the Chief Procurement Officer. Approval for the use of any Subcontractor in performance of the Services is conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to perform the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Contractor personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement.

(c) Contractor, upon entering into any agreement with a Subcontractor, must furnish upon request of the Chief Procurement Officer or the Department a copy of its agreement. Contractor must ensure that all subcontracts contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and the Chief Procurement Officer. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

(d) Contractor must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Chief Procurement Officer. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Contractor under this Agreement, without such prior written approval, has no effect upon the City.

(e) Under ' 2-92-245 of the Municipal Code, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid Contractor that amount directly. Such payment by the City to Contractor's Subcontractor under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(f) The City reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor.

ARTICLE 4. DURATION OF AGREEMENT

4.1 *Term of Performance*

This Agreement takes effect as of the Effective Date and continues, except as provided under Sections 5.4 or Article 9, until the later of (i) _____, as that date may be extended under Section 4.3, or (ii) completion of the final task assigned before the date, if and as extended, in (i).

4.2 *Timeliness of Performance*

(a) Contractor must provide the Services and Deliverables within the time limits required under any task order or request for services pursuant to the provisions of Section 3.1 and Exhibit 1. Further, Contractor acknowledges that TIME IS OF THE ESSENCE and that the failure of Contractor to comply with the required time limits may result in economic or other losses to the City.

(b) Neither Contractor nor Contractor's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

4.3 *Agreement Extension Option*

This Agreement will be in effect for the dates indicated within this Agreement for a _____ month term. The Chief Procurement Officer may exercise the City's right to extend this Agreement following the expiration of the base Agreement term for up to _____ months, subject to acceptable performance by the Contractor and contingent upon the appropriation of sufficient funds for the procurement of services provided for in this Agreement.

Before expiration of the then current Agreement term, the Chief Procurement Officer will give the Contractor notice, in writing, that the City is exercising its option to renew the Agreement for the approaching option period. The date on which the Chief Procurement Officer gives notice is the date the notice is mailed, if it is mailed, or the date the notice is delivered, if sent by courier or messenger service.

With the same amount of notice as for options, the City reserves the right to extend the Agreement for a period of no more than one hundred eighty-one (181) calendar days, either in lieu of exercising an option period or following the exhaustion of all option periods, for the purpose of providing continuity of service while procuring a replacement contract.

ARTICLE 5. COMPENSATION

5.1 *Basis of Payment*

The City will pay Contractor according to the Schedule of Compensation in the attached Exhibit 2 for the completion of the Services in accordance with this Agreement, including the standard of performance in Section 3.3.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

5.2 *Method of Payment*

Contractor must submit monthly invoices to the City for costs billed, as outlined in the Schedule of Compensation in Exhibit 2. The invoices must be in such detail as the City requests. The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

5.3 *Invoices*

This contract is subject to Centralized Invoice Processing ("CIP"). Invoices must be submitted directly to the Comptroller's office by US Postal Service mail to the following address:

INVOICES
City of Chicago, Office of the City Comptroller
33 N. LaSalle St., Room 700
Chicago, IL 60602

OR

Via email to: INVOICES@cityofchicago.org with the word INVOICE in the subject line.

All invoices must be signed, marked "original," and include the following information or payment will be delayed:

- Invoice number and date
- Contract/Purchase Order number
- Blanket Release number (if applicable)
- Vendor name and/or number
- Remittance address
- Name of City Department that ordered the goods or services
- Name and phone number of your contact at the ordering department
- Invoice quantities, commodity codes, description of deliverable(s)
- Amount due
- Receipt number (provided by the ordering department after delivery of goods/services)

Invoice quantities, service description, unit of measure, pricing and/or catalog information must correspond to the terms of the compensation schedule.

If applicable, if invoicing Price List/Catalog items, indicate Price List/Catalog number, item number, Price List/Catalog date, and Price List/Catalog page number on the invoice. Invoices for over-shipments or items with price/wage escalations will be rejected unless the Contract includes a provision for such an adjustment.

Freight, handling and shipping costs are not to be invoiced; deliveries are to be made F.O.B., City of Chicago. As stated the City of Chicago is exempt from paying State of Illinois sales tax and Federal excise taxes on purchases.

If required, Subcontractor Payment Certification forms must be mailed to the department that ordered the goods or services.

5.4 *Taxes*

Federal Excise Tax does not apply to materials purchased by the City of Chicago by virtue of Exemption Certificate No. 36-6005820 and State of Illinois Sales Tax does not apply by virtue of

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Exemption Certificate No. E9998-1874-07. Illinois Retailers Occupation Tax, Use Tax, and Municipal Retailers Occupation Tax do not apply to materials or services purchased by the City of Chicago by virtue of Statute. The price or prices quoted herein shall include all other Federal and/or State, direct and/or indirect taxes which apply. The prices quoted herein shall comply with all Federal laws and regulations.

5.5 *Funding*

The source of funds for payments under this Agreement is Fund number_____. Payments under this Agreement must not exceed \$_____ without a written amendment in accordance with Section 10.3. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the City.

5.6 *Non-Appropriation*

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Contractor in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification will be made to Contractor except that no payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

5.7 *Subcontractor Payments*

The Consultant will be responsible for reporting payments to all Subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the Consultant for services performed, on the first day of each month and every month thereafter, e-mail and/or fax audit notifications will be sent out to the Consultant with instructions to report payments that have been made in the prior month to each Subcontractor. The reporting of payments to all Subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

Once the Consultant has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an e-mail and/or fax notification requesting them to log onto the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Consultant and Subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at <https://chicago.mwdbe.com>.

ARTICLE 6. DISPUTES

Except as otherwise provided in this Agreement, Contractor must and the City may bring any dispute arising under this Agreement which is not resolved by the parties to the Chief Procurement Officer for decision based upon the written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to the Contractor by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

ARTICLE 7. COMPLIANCE WITH ALL LAWS

7.1 Compliance with All Laws Generally

(a) Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 7, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also. Further, Contractor must execute an online Economic Disclosure Statement and Affidavit ("EDS") which includes a Disclosure of Retained Parties. Submit an electronically signed, one page Certificate of Filing to Exhibit 4 which validates that the EDS has been filed. The web address to submit your EDS is <http://webapps.cityofchicago.org/EDSWeb>. Notwithstanding acceptance by the City of the EDS, Contractor's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Contractor must promptly update its online EDS(s) with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate.

(b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(c) The Contractor will comply with Section 2-154-020 of the Municipal Code of Chicago. Failure by the Contractor or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement.

(d) Without limiting the generality of the foregoing, Contractor shall abide by all federal requirements pertaining to 23 USC Section 149(e) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and all related CMAQ Program rules and regulations. At the request of the City of Chicago or IDOT, Company shall certify in writing that Company has complied in all aspects with the CMAQ Program requirements as they relate to the Bicycle Sharing Project; such certification shall be signed by an officer of Company.

7.2 Nondiscrimination

(a) Contractor

Contractor must comply with applicable federal, state, and local laws and related regulations prohibiting discrimination against individuals and groups. If this Agreement is federally funded in whole or in part, additional provisions related to nondiscrimination may be set forth in Exhibit 8.

(i) Federal Requirements

Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); and all other applicable federal statutes, regulations and other laws.

(ii) **State Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, Contractor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended, and all other applicable state statutes, regulations and other laws.

(iii) **City Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules.

(b) **Subcontractors**

Contractor must incorporate all of this Section 7.2 by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations.

7.3 Inspector General

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Inspector General or Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 or 2-55, respectively, of the Municipal Code. Contractor understands and will abide by all provisions of Chapter 2-56 and 2-55 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

7.4 Office of Compliance

It is the duty of any bidder, proposer, Contractor, Contractor, all Subcontractors, and every applicant for certification of eligibility for a City Agreement or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor or such applicant to cooperate with the Office of Compliance in any investigation or audit pursuant to Chapter 2-26 of the Municipal Code of Chicago. The Contractor understands and will abide by all provisions of Chapter 2-26 of the Municipal Code of Chicago. All subcontracts will inform Subcontractors of this provision and require understanding and compliance with it.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

7.5 MacBride Ordinance

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if Contractor conducts any business operations in Northern Ireland, the Contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section 7.5 do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

7.6 Business Relationships with Elected Officials

Pursuant to § 2-156-030(b) of the Municipal Code , it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement. The term business relationship is defined as set forth in § 2-156-080 of the Municipal Code.

Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "" ?|"" "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

7.7 Chicago "Living Wage" Ordinance

(a) Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- (i) If Contractor has 25 or more full-time employees, and
- (ii) If at any time during the performance of this Agreement, Contractor and/or any Subcontractor or any other entity that provides any portion of the Services

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(collectively "**Performing Parties**") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then

(iii) Contractor must pay its Covered Employees, and must ensure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.

(b) Contractor's obligation to pay, and to ensure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

(c) As of July 1, 2011, the Base Wage is \$11.18 per hour, and each July 1 thereafter, the Base Wage will be adjusted using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. The currently applicable Base Wage is available from the Department of Procurement Services. At all times during the term of this Agreement, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Contractor and all other Performing Parties must pay the prevailing wage rates.

(d) Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Contractor agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Contractor or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Contractor and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

(e) Not-for-Profit Corporations: If Contractor is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of subsections (a) through (d) above do not apply.

7.8 Environmental Warranties and Representations

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This section does not limit Contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect Contractor's eligibility for future contract awards.

7.9 *Prohibition on Certain Contributions*

Contractor agrees that Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent (**Owners**"), spouses and domestic partners of such Owners, Contractor's subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "**Identified Parties**"), shall not make a contribution of any amount to the Mayor of the City of Chicago ("**Mayor**") or to his political fundraising committee (i) after execution of this Agreement by Contractor, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Contractor and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Contractor or the date Contractor approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Contractor agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Contractor agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Contractor's bid.

For purposes of this provision:

ABundle@ means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

“Other Contract” means any other agreement with the City of Chicago to which Contractor is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

“Contribution” means a “political contribution” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are “Domestic Partners” if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
 1. The partners have been residing together for at least 12 months.
 2. The partners have common or joint ownership of a residence.
 3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 4. Each partner identifies the other partner as a primary beneficiary in a will.

“Political fundraising committee” means a “political fundraising committee” as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.”

7.10 Firms Owned or Operated by Individuals with Disabilities

The City encourages consultants to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

7.11 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

7.12 False Statements

- (a) 1-21-010 False Statements

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees.

The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code. (Added Coun. J. 12-15-04, p. 39915, § 1)

- (b) 1-21-020 Aiding and abetting.

Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the city for the same penalties for the violation. (Added Coun. J. 12-15-04, p. 39915, § 1)

- (c) 1-21-030 Enforcement.

In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of administrative hearings. (Added Coun. J. 12-15-04, p. 39915, § 1)

ARTICLE 8. SPECIAL CONDITIONS

8.1 *Warranties and Representations*

In connection with signing and carrying out this Agreement, Contractor:

(a) warrants that Contractor is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Contractor is not appropriately licensed;

(b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors of any tier are competent to perform the Services required under this Agreement; and Contractor is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

(c) warrants that it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Services under this Agreement;

(d) warrants that Contractor and its Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City ;

(e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

(f) represents that Contractor and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of § 2-92-320 of the Municipal Code , and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 9.2 and 9.3 of this Agreement; and

(h) warrants and represents that neither Contractor nor an Affiliate of Contractor (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce (or their successors), or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment. **Affiliate of Contractor** means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with Contractor. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

8.2 Ethics

(a) In addition to the foregoing warranties and representations, Contractor warrants:

(i) no officer, agent or employee of the City is employed by Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code .

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Contractor or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) Contractor further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

8.3 Joint and Several Liability

If Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Contractor is the joint and several obligation or undertaking of each such individual or other legal entity.

8.4 Business Documents

At the request of the City, Contractor must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

8.5 Conflicts of Interest

(a) No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

(b) Contractor represents that it, and to the best of its knowledge, its Subcontractors if any (Contractor and Subcontractors will be collectively referred to in this Section 8.5 as "**Consulting**

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Parties"), presently have no direct or indirect interest and will not acquire any direct or indirect interest in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, Consulting Parties must disclose to the City their past client lists and the names of any clients with whom they have an ongoing relationship. Consulting Parties are not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consulting Parties' past or present clients. If Consulting Parties become aware of a conflict, they must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Further, Consulting Parties must not assign any person having any conflicting interest to perform any Services under this Agreement or have access to any confidential information, as described in Section 3.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consulting Parties' services for others conflict with the Services that Consulting Parties are to render for the City under this Agreement, Consulting Parties must terminate such other services immediately upon request of the City.

(f) Furthermore, if any federal funds are to be used to compensate or reimburse Contractor under this Agreement, Contractor represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. § 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Contractor must execute a Certification Regarding Lobbying, which is part of the EDS and incorporated by reference as if fully set forth here.

8.6 Non-Liability of Public Officials

Contractor and any assignee or Subcontractor of Contractor must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

8.7 EDS / Certification Regarding Suspension and Debarment

Contractor certifies, as further evidenced in the EDS attached as Exhibit 4, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

ARTICLE 9. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

9.1 *Events of Default Defined*

The following constitute events of default:

(a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City.

(b) Contractor's failure to perform any of its obligations under this Agreement including the following:

(i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services;

(ii) Failure to have and maintain all professional licenses required by law to perform the Services;

(iii) Failure to timely perform the Services;

(iv) Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the Chief Procurement Officer or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

(v) Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;

(vi) Discontinuance of the Services for reasons within Contractor's reasonable control;

(vii) Failure to comply with Section 7.1 in the performance of the Agreement;

(viii) Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate; and

(ix) Any other acts specifically stated in this Agreement as constituting an act of default.

(c) Any change in ownership or control of Contractor without the prior written approval of the Chief Procurement Officer (when such prior approval is permissible by law), which approval the Chief Procurement Officer will not unreasonably withhold.

(d) Contractor's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Contractor acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.

(e) Contractor's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Chief Procurement Officer, it indicates a willful or reckless disregard for City laws and regulations.

(f) Contractor's failure to update its EDS to reflect any changes in information, including changes in ownership, and to provide it to the City as provided under Section 7.1(a).

9.2 *Remedies*

(a) Notices. The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default. The Chief Procurement Officer may in his sole discretion give

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Contractor an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days unless extended by the Chief Procurement Officer. Whether to declare Contractor in default is within the sole discretion of the Chief Procurement Officer and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement.

The Chief Procurement Officer will give Contractor written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice"). If the Chief Procurement Officer gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the Chief Procurement Officer decides not to terminate, this decision will not preclude him from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Chief Procurement Officer may give a Default Notice if Contractor fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, Contractor must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

(b) Exercise of Remedies. After giving a Default Notice, the City may invoke any or all of the following remedies:

- (i) The right to take over and complete the Services, or any part of them, at Contractor's expense and as agent for Contractor, either directly or through others, and bill Contractor for the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the City would have paid Contractor under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Contractor under this Section 9.2;
- (ii) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- (iii) The right of specific performance, an injunction or any other appropriate equitable remedy;
- (iv) The right to money damages;
- (v) The right to withhold all or any part of Contractor's compensation under this Agreement;
- (vi) The right to deem Contractor non-responsible in future contracts to be awarded by the City;
- (vii) The right to declare default on any other contract or agreement Contractor may have with the City.

(c) City's Reservation of Rights. If the Chief Procurement Officer considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Contractor to continue to provide the Services despite one or more events of default, Contractor is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) Non-Exclusivity of Remedies. The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

9.3 *Early Termination*

(a) In addition to termination under Sections 9.1 and 9.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Contractor. The City will give notice to Contractor in accordance with the provisions of Article 11. The effective date of termination will be the date the notice is received by Contractor or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

(b) After the notice is received, Contractor must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 5, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Contractor must attempt to agree on the amount of compensation to be paid to Contractor, but if not agreed on, the dispute must be settled in accordance with Article 6 of this Agreement. The payment so made to Contractor is in full settlement for all Services satisfactorily performed under this Agreement.

(c) Contractor must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Contractor will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Contractor or the City.

(d) If the City's election to terminate this Agreement for default under Sections 9.1 and 9.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.3.

9.4 *Suspension*

The City may at any time request that Contractor suspend its Services, or any part of them, by giving 15 days prior written notice to Contractor or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Contractor must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Contractor when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Contractor as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 5 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Contractor by written notice to the City may treat the suspension as an early termination of this Agreement under Section 9.3.

9.5 *Right to Offset*

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(a) In connection with Contractor's performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:

- (i) if the City terminates this Agreement for default or any other reason resulting from Contractor's performance or non-performance;
- (ii) if the City exercises any of its remedies under Section 9.2 of this Agreement;
- (iii) if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these incremental costs and other damages by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, Contractor is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

(b) As provided under § 2-92-380 of the Municipal Code, the City may set off from Contractor's compensation under this Agreement an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and the amount of any debt owed by Contractor to the City as those italicized terms are defined in the Municipal Code.

(c) In connection with any liquidated or unliquidated claims against Contractor, and without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Contractor unrelated to this Agreement. When the City's claims against Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse Contractor to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 10. GENERAL CONDITIONS

10.1 *Entire Agreement*

- (a) **General**

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

- (b) **No Collateral Agreements**

Contractor acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

(c) No Omissions

Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Contractor did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Contractor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

10.3 Changes, Modifications, and Amendments

No change, modification, or amendment of this Agreement, or any part hereof, is valid unless stipulated in writing and signed by the Mayor, Comptroller, and Chief Procurement Officer of the City. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 10.3. This Section, 10.3, does not apply, however, to Agreement extensions governed by section 4.3, Agreement Extension Option.

10.4 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Contractor irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Contractor, or by personal delivery on any officer, director, or managing or general agent of Contractor. If any action is brought by Contractor against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

10.5 Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

10.6 Assigns

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

10.7 Cooperation

Contractor must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to ensure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

10.8 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Contractor's performance in any respect or waives a requirement or condition to either the City's or Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Contractor in writing.

10.9 Independent Contractor

(a) This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Contractor is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

(i) The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Contractor performing the Services required under this Agreement.

(ii) Contractor is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Contractor.

(c) Shakman Accord

(i) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Consultant is aware that City policy prohibits City employees from directing any individual to apply for a position with Consultant, either as an employee or as a subcontractor, and from directing Consultant to hire an individual as an employee or as a subcontractor. Accordingly, Consultant must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Consultant under this Agreement are employees or subcontractors of Consultant, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Consultant.

(iii) Consultant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(iv) In the event of any communication to Consultant by a City employee or City official in violation of Section 10.10(c)(ii) above, or advocating a violation of Section 10.10(c)(iii) above, Consultant will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement. Consultant will also cooperate with inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

10.10 Electronic Ordering and Invoices

The Contractor shall cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to catalogs, purchase orders, releases, and invoices. Contractor shall accept electronic purchase orders and releases upon request of the Chief Procurement Officer. Contractor shall provide the City electronic catalogs, copies of invoices and other electronic documents upon request. The electronic ordering and invoice documents shall be in a format specified by the City and transmitted by an electronic means specified by the City. Such electronic means may include, but are not limited to, disks, e-mail, EDI, FTP, web sites, and third party electronic services. The Chief Procurement Officer reserves the right to change the document format and/or the means of transmission upon written notice to the Contractor. Contractor shall ensure that the essential information, as determined by the Chief Procurement Officer, in the electronic document, corresponds to that information submitted by the Contractor in its paper documents. The electronic documents shall be in addition to paper documents required by this contract, however, by written notice to the Contractor, the Chief Procurement Officer may deem any or all of the electronic ordering and invoice documents the official documents and/or eliminate the requirement for paper ordering and invoice documents.

10.11 Participation by Other Local Government Agencies

Other local government agencies may be eligible to participate in this agreement pursuant to the terms and conditions of this Contract if such agencies are authorized, by law or their governing bodies, to

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

execute such purchases, and if such authorization is allowed by the City of Chicago's Chief Procurement Officer, and if such purchases have no net adverse effect on the City of Chicago, and result in no diminished services from the Contractor to the City's user departments pursuant to such purchases. Examples of such Local Government Agencies are: Board of Education, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier and Exposition Authority (McCormick Place, Navy Pier), Cook County and the Municipal Courts. Said purchases shall be made upon the issuance of a purchase order directly from the Local Government Agency. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

ARTICLE 11. NOTICES

Notices provided for in this Agreement, unless provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City: Chicago Department of Transportation
 121 N. LaSalle St., Rm 107
 City Hall
 Chicago, Illinois 60602
 Attention: Commissioner

and

Department of Procurement Services
Room 403, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

With Copies to: Department of Law
 Room 600, City Hall
 121 North LaSalle Street
 Chicago, Illinois 60602
 Attention: Corporation Counsel

If to Contractor: _____

Attention: _____

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 12. AUTHORITY

Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Contractor have been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement, including each and every representation, certification and warranty

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

[Signature Pages, Exhibits and Schedules follow.]

Request for Proposal for The Purchase, Installation and Operation of a Bicycle Sharing System in the City of Chicago
Specification No. 100320-A

CONTRACT SIGNATURE PAGE

Contract No.: _____

Specification No.: _____

Vendor Name: _____

Total Amount (Value): _____

Fund Chargeable: _____

(Contractor)

By: _____

Its: _____

Attest: _____

State of _____
County of _____

This instrument was acknowledged before me on this _____ day of _____, 20____ by
_____ as President (or other authorized officer) and
_____ as Secretary of _____ (Corporation Name).
(Seal)

Notary Public Signature
Commission Expires: _____

CITY OF CHICAGO

Mayor Date

Commissioner Date

Chief Procurement Officer Date

EXHIBIT 10

Contractor's Performance & Payment Bond - Specimen

CONTRACTORS PERFORMANCE & PAYMENT BOND

Know All Men By these Presents, That we,

of the County of Cook and State of Illinois, are held and firmly bound unto the CITY OF CHICAGO in the penal sum of lawful money of the United States, for the payment of which sum of money, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this _____ day of _____ A.D., 2000

The Condition of the Above Obligation is such,

That whereas the above bounden Contractor has entered into a certain contract with the CITY OF CHICAGO, bearing contract No. And Specification No. all in conformity with said contract, for,

S P E C I M E N

The said contract is incorporated herein reference in its entirety, including without limitation, any and all indemnification provisions.

Now, if the said Contractor shall in all respects well and truly keep and perform the said contract on its part, in accordance with the terms and provisions of all of the Contract Documents comprising said contract, and in the time and manner therein prescribed, and further shall save, indemnify and keep harmless the City of Chicago against all loss, damages, claims, liabilities, judgments, cost and expenses which may in anywise accrue against said City of Chicago, in consequence of the granting of said contract, or which may in anywise result therefrom, or which may result from strict liability, or which may in anywise result from any injuries to, or death of, any person or damage to real or personal property, arising directly or indirectly from or in connection with, work performed or to be performed under said contract by said Contractor, its Agents, Employees or Workmen, assignees, subcontractors, or anyone else, in any respect whatever, or which may result on account of any infringement of any patent by reason of the materials, machinery, devices or apparatus used in the performance of said contract, and moreover, shall pay to said City any sum or sums of money determined by the Chief Procurement Officer, and /or by a court of competent jurisdiction, to be due said City by reason of any failure or neglect in the performance of the requirements of said contract, wherefore the Chief Procurement Officer shall have elected to suspend or cancel the same, and shall pay all

claims and demands whatsoever, which may accrue to each materialman and subcontractor, and to each and every person who shall be employed by the said Contractor or by its assignees and subcontractors, in or about the performance of said contract, and with wages paid at prevailing wage rates if so required by said contract, and shall insure its ability to pay the compensation, and shall pay all claims and demands for compensation which may accrue to each and every person who shall be employed by them or any of them in or about the performance of said contract, or which shall accrue to the beneficiaries or dependents of any such person, under the provisions of the Workers' Compensation Act, 820 ILCS 305, as amended, and the Workers' Occupational Disease Act 820 ILCS 310, as amended (hereinafter referred to as "Acts") then is this obligation to be null and void, otherwise to remain in full force and effect.

And it is hereby expressly understood and agreed, and made a condition hereof, that any judgment rendered against said City in any suit based upon any loss, damages, claims, liabilities, judgments, cost or expenses which may in anywise accrue against said City as a consequence of the granting of said contract, or which may in anywise result therefrom, or which in anywise result from any injuries to, or death of any person, or damage to any real or personal property, arising or indirectly from, or in connection with, work performed, or to be performed under said contract by said Contractor or its agents, employees or workmen, assignees, subcontractors, or anyone else and also any decision of the Industrial Commission of the State of Illinois, and any order of court based upon such decision, or judgment thereon, render against said City of Chicago in any suit or claim arising under the aforementioned Acts when notice of the pendency or arbitration proceedings or suit shall have given said Contractor, shall be conclusive against each and all parties to this obligation, as to amount, liability and all other things pertaining thereto.

Every person furnishing material or performing labor in the performance of said contract, either as an individual, as subcontractor, or otherwise, shall have the right to sue on this bond in the name of the City of Chicago, for his use and benefit, and in such suit said person, as plaintiff, shall file a copy of this bond, certified by the party or parties in whose charge this bond shall be, which copy shall be, unless execution thereof be denied under oath, prima facie evidence of the execution and delivery of the original; provided that nothing in this bond contained shall be taken to make the City of Chicago liable to any subcontractor, materialman, laborer or to any other person to any greater extent than it would have been liable prior to the enactment of the Public Construction Bond Act, 30 ILCS 550, as amended; provided further, that any person having a claim for labor and materials furnished in the performance of this contract shall have no right of action unless he shall have filed a verified notice of such claim with the Clerk of the City of Chicago within 180 days after the date of the last item of work or the furnishing of the last item of materials, and shall have furnished a copy of such verified notice to the contractor within 10 days of the filing of the notice with the City of Chicago. Such claim shall be verified and shall contain the name and address of the claimant, the business address of the claimant within the State of Illinois, if any, or if the claimant be a foreign corporation having no place of business with the State the principal place of business of said corporation, and in all cases of partnership the names and residences of each of the partners, the name of the contractor for the City of Chicago, the name of the person, firm or corporation by whom the claimant was employed or to whom such claimant furnished materials, the amount of the claim and a brief description of the

public improvement for the construction or installation of which the contract is to be performed. Provided, further, that no defect in the notice herein provided for shall deprive the claimant of his right of action under the terms and provisions of this bond unless it shall affirmatively appear that such defect has prejudiced the rights of an interested party asserting the same; provided, further that no action shall be brought until the expiration of one hundred twenty (120) days after the date of the last item of work or of the furnishing of the last item of material, except in cases where the final settlement between the City of Chicago and the Contractor shall have been made prior to the expiration of the 120 day period in which case action may be taken immediately following such final settlement, and provided, further, that no action of any kind shall be brought later than six (6) months after the acceptance by the City of Chicago of the completion of work. Any suit upon this bond shall be brought only in a circuit court of the State of Illinois in the judicial district in which the contract shall have been performed.

The said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of any of the Contract Documents comprising said contract, or to the work to be performed thereunder, shall in anywise affect the obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of said Contract Documents or to the work.

Approved _____, 20__________ (Seal)

__________ (Seal)
Chief Procurement Officer

__________ (Seal)

__________ (Seal)

Approved as to form and legality: __________ (Seal)

__________ (Seal)
Assistant Corporation Counsel

EXHIBIT 11

Public Work Provisions

Public Work Provisions

A. Public Work Indemnity

1) Contractor must protect, defend, indemnify, and hold the City, its officers, officials, representatives, and employees (collectively the "Indemnitees"), harmless from and against any and all claims, damages, demands, injury or death, in consequence of, arising out of or being in any way connected with Contractor's performance with respect to any public work construction under this Agreement except for matters shown by final judgment to have been caused by or attributable to the negligence of Indemnitees. This indemnification obligation is effective to the maximum extent permitted by applicable law. This indemnity extends to all legal costs, including attorney fees, costs, liens, judgments, settlements, penalties, professional fees, and other expenses incurred by the City, including fines and penalties imposed by public bodies, and the reasonable settlement of such claims. This indemnification obligation is not limited by any amount of insurance required under this Agreement. Further, the indemnification obligation contained in this section will survive the expiration or termination of this Agreement.

2) Contractor will be solely responsible for the defense of any and all claims, demands, or suits against Indemnitees, including claims by Contractor's employees, subcontractors, agents, or servants even though the claimant may allege that the Indemnitees were in charge of the construction of the public work or alleged negligence on the part of Indemnitees. The City will have the right, at its sole option, to participate in the defense of any such suit, without relieving Contractor of its obligations under this section.

3) "Injury" or "damage" as these words are used in this section will be construed to include injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not they are owned, furnished, or loaned by the Indemnitees.

4) Contractor must promptly provide, or cause to be provided, to the Commissioner and City Corporation Counsel copies of all notices that Contractor may receive of any claims, actions, or suits that may be given or filed in connection with Contractors performance or the performance of any Subcontractor and for which the Indemnitees are entitled to indemnification under this Agreement and to give the Indemnitees authority, information and assistance for the defense of any claim or action.

B. Prevailing Wage Rates

In accordance with 820 ILCS 130/1 et seq., in the performance of the work, Contractor is fully responsible for paying not less than the prevailing rate of wages as determined by the Illinois Department of Labor, which must be paid to all laborers, mechanics, and other workers performing public works under this Agreement. These wage rates are also the prevailing wage rates for the City of Chicago, as determined by the Department. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid for the work before completion of the Project, the revised rate applies to this Agreement from the effective date of the revision. If federal wage provisions apply, such provisions will supersede this provision.

C. Performance Bond

Contractor must deliver to the City prior to execution of the Agreement a performance and payment bond in a sum for an amount that is equal to 25 percent of the total amount of the

Agreement. Any performance bond that Contractor provides must comply with the provisions of 30 ILCS 550/1 et seq., as amended, and of Chapter 2, Section 2-92-030 of the Municipal Code, as amended. The surety or sureties issuing the bond must be acceptable to the Comptroller and must have a Best's Key Rating Guide of "B+," Class XI or greater and be listed in the most recently published "Listing of Approved Sureties" of the U.S. Department of the Treasury Circular 570, with underwriting limitations in excess of the Contract Price. In case of Contractor's neglect, failure, or refusal to provide satisfactory sureties when so directed within 10 days after such notification, under § 2-92-040 of the Municipal Code the Chief Procurement Officer may declare this Agreement forfeit, but such forfeiture will not release Contractor or Contractor's surety or sureties from any liability that may have accrued before the date of the forfeiture. If at any time the surety or sureties, or any one of them, upon the bond become insolvent, or are, in the sole opinion of the Chief Procurement Officer, unsatisfactory, or unable to respond to damages in case of liability on such bond, the Chief Procurement Officer will notify Contractor and direct that Contractor furnish a bond issued by a satisfactory surety or sureties forthwith.

D. Multi-Project Labor Agreement (PLA)

The City has entered into the PLA with various trades regarding projects as described in the PLA, a copy of which, without appendices, is attached hereto as Attachment A. A copy of the PLA, with appendices, may also be found on the City's website at <http://www.cityofchicago.org/PLA>. Contractor acknowledges familiarity with the requirements of the PLA and its applicability to any Work under this Agreement, and shall comply in all respects with the PLA.

Exhibit 12
Required Federal Provisions

EXHIBIT 12
Required Federal Provisions

Respondent acknowledges that it will be subject to all applicable contractual provisions and certification documents required by the funding source if federal grant funds are used. Such contractual provisions may include, but are not limited to, the following:

A. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, Contractor:

- 1)** Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action must include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor must post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2)** Will, in all solicitations or advertisements for employees placed by Contractor or on Contractor's behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3)** Will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and must post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4)** Will comply with all provisions of Executive Order No. 11246 or September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5)** Will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Contractor's books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- 6)** In the event of Contractor's noncompliance with the nondiscrimination clause of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7) Contractor will include the provisions of the above Paragraphs 1) through 6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that the provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. If, however, Contractor becomes involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction by the federal government contracting agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. OTHER FEDERAL PROVISIONS

1) Interest of Members of or Delegates to the United States Congress

In accordance with 41 USC 22, Contractor will not admit any member of or delegate to the United States Congress to any share or part of the Contract or any benefit derived therefrom.

2) False or Fraudulent Statements and Claims

a) Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC 3081 et seq. and U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR Part 31, apply to actions pertaining to the Contract. Accordingly, by signing the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement Contractor has made, Contractor makes, or Contractor may make pertaining to the Contract, including any invoice for Contractor's services. In addition to other penalties that may be applicable, Contractor also acknowledges that if Contractor makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Contractor to the extent the federal government deems appropriate.

b) Contractor also acknowledges that if Contractor makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the City or federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 USC 5307, the Government reserves the right to impose on Contractor the penalties of 18 USC 1001 and 49 USC 5307(n)(1), to the extent the federal government deems appropriate.

3) Federal Interest in Patents

a) General. If any invention, improvement, or discovery of Contractor is conceived or first actually reduced to practice in the course of or under the Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor must notify City immediately and provide a detailed report.

b) Federal Rights. Unless the federal government later makes a contrary determination in writing, the rights and responsibilities of the City, Contractor, and the federal government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations, including any waiver of them; and irrespective of Contractor's status or the status of any Subcontractor at any tier (e.g., a large business, small business, non-profit organization, institution of higher education, individual),

Contractor will transmit to the federal government those rights due the federal government in any invention resulting from the Contract.

4) Federal Interest in Data and Copyrights

a) Definition

The term "subject data" used in this Section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. Examples include computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Agreement administration.

b) Federal Restrictions

The following restrictions apply to all subject data first produced in the performance of the Agreement. Except as provided in the Agreement and except for Contractor's own internal use, Contractor may not publish or publicly reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the City and the federal government, until such time as the federal government may have either released or approved the release of such data to the public.

c) Federal Rights in Data and Copyrights

In accordance with subparts 34 and 36 of the Common Rule, the City and the federal government reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for City or federal government purposes, the types of subject data described below. Without the copyright owner's consent, the City and federal government may not extend their license to other parties.

(1) Any subject data developed under the Contract or subagreement financed by a federal Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

(2) Any rights of copyright in which Contractor purchase ownership with federal assistance.

5) No Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by federal statute or regulations, Contractor will comply with the requirements of 49 USC 5323(h)(2) by refraining from using any federal assistance to support subcontracts procured using exclusionary or discriminatory specifications.

6) Cargo Preference - Use of United States Flag Vessels

Contractor must comply with U.S. Maritime Administration regulations, "Cargo-Preference - U.S. Flag Vessels," 49 CFR Part 381, and include the clauses required by those regulations, modified as necessary to identify the affected parties, in each subcontract or sub-agreement involving equipment, materials, or commodities suitable for transport by ocean vessel.

7) Fly America

Contractor must comply with 49 USC Section 40118, and related regulations at 41 CFR Part 301-10, regarding use of United States air carriers, and included clauses requiring Contractor's Subcontractors to comply with the requirements of 49 USC Section 40118, and related regulations at 4 CFR Part 52, in all of Contractor's subcontracts.

8) No Federal Government Obligations to Third Parties

Absent the federal government's express written consent, the federal government is not subject to any obligations or liabilities to any contractor or any other person not a party to the Grant Agreement or Cooperative Agreement between the City and the federal government, which is a source of funds for this Contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, agreement, or contract, the federal government continues to have no obligations or liabilities to any party, including Contractor.

9) Allowable Costs

Notwithstanding any compensation provision to the contrary, Contractor compensation under this Contract is limited to those amounts that are allowable and allocable to the Contract in accordance with OMB Circular A-87 and the regulations in 49 CFR Part 18. To the extent that an audit reveals that Contractor have received payment in excess of such amounts, the City may offset such excess payments against any future payments due to Contractor and, if no future payments are due or if future payments are less than such excess, Contractor must promptly refund the amount of the excess payments to the City.

10) Contract Work Hours and Safety Standards Act

If applicable according to their terms, Contractor must comply and assure compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC 327 through 333, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 CFR Part 5; and U.S. DOL regulations, "Safety and Health Regulations for Construction", 29 CFR Part 1926. In addition to other requirements that may apply:

a) In accordance with sections of the Contract Work Hours and Safety Standards Act, as amended, 40 USC 327 through 332, Contractor must assure that, for the Contract, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for Work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 CFR Part 5.

b) In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC 333, Contractor must assure that no laborer or mechanic working on a construction contract is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with US DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

11) Seismic Safety

If this Contract is for the construction of a building or an addition thereto, Contractor must apply the requirements of US DOT regulations applicable to seismic safety requirements for US DOT assisted construction projects at 49 CFR Part 41, (specifically, 49 CFR 41.120), and any implementing guidance the federal government may issue, to the construction of any new building and to additions to any existing building.

12) Buy America

Contractor must ensure that any Work performed under this Contract complies with the "Buy America" regulations of the FHWA, as set forth in 23 CFR Part 635.410, which generally require that all manufacturing processes for steel and iron products to be incorporated in a construction project occur in the United States.

13) Buy America Certification

The Contractor agrees to comply with all statutes and regulations that provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in federally funded projects are produced in the United States, unless a waiver has been granted or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

14) Audit and Inspection

The Contractor agrees to permit the Secretary of Transportation ("Secretary") and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project. The Contractor agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

15) Certification Regarding Lobbying

Contractor certifies that it will comply with 6 CFR Part 9, and other applicable regulations, including the following:

Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan or cooperative agreement.

If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence any of the above persons in connection with the Agreement, the undersigned must also complete and submit federal form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

If there are any indirect costs associated with the Agreement, total lobbying costs must be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

Contractor must include the language of this certification in any contracts with its Subcontractors. All Subcontractors are also subject to certification and disclosure.

This certification is a material representation of fact upon which reliance was placed to enter into this transaction and is a prerequisite for this transaction, pursuant to 31 U.S.C. Section 1352 (1989). Any person who fails to file the required certifications are subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16) Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549 its implementing regulations, as applicable, the Contractor certifies that it and its principals:

(i) are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by an federal department or agency;

(ii) have not within a three year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(iv) have not within a three year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

If Contractor is unable to certify to any of the statements in this Section, Contractor must attach an explanation.

This certification is a material representation of fact upon which reliance was placed to enter into this transaction and is a prerequisite for this transaction.

17) International Anti-Boycott

Contractor certifies that neither it nor any substantially-owned affiliated company is participating or will participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated thereunder.

18) Liability

The FHWA and City assume no liability for actions of Contractor under the Agreement, including, but not limited to, the negligent acts and omissions of Contractor's agents, employees, and Subcontractors in their performance of the Contractor's duties as described under the Agreement. To the extent allowed by law, Contractor agrees to hold harmless the FHWA and City against any and all liability, loss, damage, cost or expenses, including attorneys fees, arising from the intentional torts, negligence, or breach of the Agreement by Contractor, with the exception of acts performed in conformance with an explicit, written directive of the FHWA and City, unless such actions are covered by indemnities stated elsewhere in the Agreement between the parties.

19) Records and Site Visits

Contractor shall, upon request, grant access to the City and/or FHWA and the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Contractor must maintain all such books, documents, papers, and records for a period of three years after City makes final payment and all other pending matters are closed. Contractor acknowledges that, if applicable, it will comply with any and all reporting requirements under applicable regulations.

20) Drug Free Certification

Contractor shall comply with the federal Drug-Free Workplace Act of 1988, 41 USC §701, 44 CFR Part 17. The Drug Free Workplace Act requires that Contractor shall not be entitled to receive any monies hereunder unless Contractor has certified that Contractor will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the agreement and debarment of contracting or grant opportunities with the City or State for at least one (1) year but not more than five (5) years. Contractor certifies and agrees that it will provide a drug free workplace by:

- (a) Publishing a statement:

(1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the Contractor's workplace.

(2) Specifying the actions that will be taken against employees for violations of such prohibition.

(3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:

(A) abide by the terms of the statement, and

(B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

(b) Establishing a drug free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the Contractor's policy of maintaining a drug free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon an employee for drug violations.

(c) Providing a copy of the statement required by subparagraph (s) to each employee engaged in the contract or grant and to post the statement in a prominent place in the workplace.

(d) Notifying the contracting or granting Agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.

(e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5 of the Drug Free Workplace Act.

(f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.

(g) making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

21) Copeland Anti-Kickback

To the extent applicable, Contractor must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3)

22) Davis-Bacon

To the extent applicable, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).

23) Compliance with Law and Regulations

Contractor must comply with all applicable provisions of FHWA regulations, and all state and local laws, ordinances and executive orders relating to the Agreement, including, but not limited to: Provisions of 49 CFR applicable to grants and cooperative agreements, including Parts relating to Administrative Review Procedures and Nondiscrimination. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act (ADA) (1990); the Age Discrimination Act of 1975; Sections 102 and 107 of Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented by 29 CFR part 5; all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 USC 1251 et seq.), section 508 of the Clean Water Act (33 U.S.C 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); all applicable provisions of federal Environmental and Historic Preservation regulations; all mandatory standards and policies relating to energy efficiency that are contained in the Illinois energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). Information National Historic Preservation Act of 1966, 16 U.S.C. §470 et seq. and Executive Order 11593; Archeological and Historical Preservation Act of 1966, 16 U.S.C. 569a 1 et seq.; Historical and Archeological Data Preservation Act of 1960, as amended, 16 U.S.C. §469 et seq.; the Illinois Procurement Code, 30 ILCS 500 et seq. Contractor certifies that its facilities are not listed and are not under consideration for listing on the U.S. Environmental Protection Agency's list of Violating Facilities.

24) Order of Precedence

Notwithstanding anything in the Agreement to the contrary, Contractor is subject to and must conform to all of the terms and conditions of this Exhibit. In the event of any conflict or inconsistency between the terms set forth in the Agreement and the terms set forth in this Exhibit, the terms and provisions in this Exhibit take precedence over the terms and provisions in the Agreement, except to the extent that the Agreement contains provisions more favorable to the City or federal government or onerous to Contractor. Contractor must not by action or omission cause the City to be in breach of the grant agreement between the City and the funding source.

Exhibit B

2012 IL App (1st) 112332-U

Third Division
July 18, 2012

No. 1-11-2332

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO AVIATION PARTNERS, DUTY FREE AMERICAS, INC., and CHICAGO DUTY FREE SHOPS,)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,)	
v.)	11 CH 27487
CITY OF CHICAGO and WESTFIELD CONCESSION MANAGEMENT, LLC,)	Honorable Mary Anne Mason, Judge Presiding.
Defendants-Appellees.)	

JUSTICE NEVILLE delivered the judgment of the court. Justices Murphy and Salone concurred in the judgment.

ORDER

¶ 1 **HELD:** A city acts in a legislative capacity, and not in an administrative capacity, when it weighs a range of advantages and disadvantages of two competing proposals for development of city property. When a city, acting in its legislative capacity, adopts an ordinance, the courts will not invalidate the ordinance unless it violates a constitutional or statutory provision. Statutes pertaining to municipalities do not apply to home rule units unless the statutes expressly so provide. The trial court correctly dismissed a complaint against a city for awarding a contract to an allegedly less worthy bidder where the facts alleged in the complaint could not support a finding that the city breached a promise or

1-11-2332

violated a statute or constitutional provision.

- ¶ 2 The City of Chicago (City) issued a request for proposals (RFP) inviting contractors to send it offers for redesigning and managing concessions in a terminal at O'Hare Airport. The City passed an ordinance awarding the contract to Westfield Concession Management, LLC (Westfield). Chicago Aviation Partners (CAP), whose proposal lost to Westfield's, filed a complaint against the City and Westfield to stop the redevelopment project and prayed for a judgment awarding the contract to CAP. CAP and two affiliated corporations in separate counts sought damages for breach of contract and interference with prospective economic advantage. The trial court dismissed the complaint with prejudice.
- ¶ 3 On appeal, we hold that we cannot overturn the ordinance unless the City violated a statute or constitutional provision when it enacted the ordinance. CAP claims that the City violated several provisions of the Illinois Municipal Code (65 ILCS 5/8-10-2.5, 8-10-3, 8-10-4 (West 2008)), but those provisions do not apply to home rule units like the City. CAP also accuses the City of breaching promises it made in its RFP, but on reviewing the language of the RFP and the complaint, we find that CAP has not alleged facts that could support a finding that the City breached any promise it made in the RFP. Accordingly, we affirm the trial court's judgment.

¶ 4 BACKGROUND

- ¶ 5 In 2009, the City issued an RFP, inviting contractors to send the City proposals for the design, financing, construction, leasing and management of the concessions program in O'Hare's Terminal 5, the terminal for international flights. In the RFP, the City said:

1-11-2332

"It is the City's intent to award the concession offered by this RFP to the qualified and responsible respondent who provide[s] the best overall proposal, in the City's sole opinion. The City is not required to select the proposal with the highest proposed Minimum Annual Guaranteed fees or the highest projected compensation to the City.

* * *

The City reserves the right to reject any or all proposals and to invite new proposals, or take such other course of action as the City deems appropriate at the City's sole and absolute discretion. The City reserves the right to:

- a) Waive any informality in any proposal ***.
- b) Reject or cancel any or all proposals.
- c) Reject any portion(s) of a proposal.
- d) Reissue the RFP with or without modification.
- e) Modify the locations and sizes of the offered space.
- f) Select multiple proposals.
- g) Negotiate all proposal elements.

Any one or more of the following causes, among others, may be considered sufficient for the rejection of a respondent's proposal, regardless of respondent's qualifications in respect to other Evaluation

1-11-2332

Criteria ***:

* * *

d) Submission of a proposal that is incomplete, conditional, ambiguous, obscure, or that contains alterations or irregularities of any kind.

* * *

The Agreement will become effective and binding on the date of its counter-signature by the Mayor ("Effective Date"). The Term will commence on the Effective Date and will expire on the 20th anniversary of the Date of Beneficial Occupancy ***.

*** [T]he Selected Respondent will pay to the City on an annual basis a Concession Fee as follows:

*** The Concession Fee for each Lease Year equals the greater of (1) the Minimum Annual Guaranteed Fee ("MAG") and (2) the Percentage Fee, which equals the product of Percentage Fee Rate(s) multiplied by gross concession revenues during the Lease Year ***.

Respondent must propose 1) a MAG for each Lease Year of the Term and 2) a Percentage Fee Rate for each Lease Year of the Term. ***

1-11-2332

* * *

All proposals will be reviewed and evaluated by an Evaluation Committee appointed by the Commissioner, which will recommend to the Commissioner one or more respondents for award of the subject concessions. *** [W]eights have been assigned to each of the following Evaluation Criteria based on a 500-point scale. ***

* * *

Experience and Qualifications	100
Merchandising and Concept Plan	125
Facility Design	75
Management and Operations Plan	75
Compensation to the City	125." (Emphasis in original).

¶ 6 Three qualified contractors, including CAP and Westfield, responded to the RFP. The City Council's Aviation Committee recommended approval of Westfield's proposal. After some negotiation that modified the terms of Westfield's bid, the City Council, on July 28, 2011, adopted an ordinance awarding the contract to Westfield.

¶ 7 CAP sued the City and Westfield in August 2011, seeking to block Westfield's construction at Terminal 5. CAP alleged that Duty Free Americas, Inc. (DFA), and McDonald's Corporation formed CAP in 1993 to manage concessions in Terminal 5. In 1993, the City awarded CAP a 10 year contract for managing those concessions. After the contract expired in 2003, the City permitted CAP to continue operating concessions at Terminal 5 on a

1-11-2332

month-to-month basis.

- ¶ 8 According to the complaint, the City issued RFPs for the development of Terminal 5 concessions in 2004, 2007 and 2008, but each time, the City decided not to award a contract to any of the bidders. In response to the 2009 RFP, CAP submitted a bid that included a MAG of \$11.59 million, while Westfield offered substantially less, and made its payments contingent on the airport maintaining its emplanements at Terminal 5 at about the level achieved in 2008. CAP offered the City 27% of duty free sales at Terminal 5, plus varying percentages of other sales, while Westfield offered only a flat 16% of all sales at Terminal 5. During negotiations, Westfield agreed to give the City the right to terminate the agreement after 10 years. The City did not give CAP an opportunity to revise its bid to make a similar concession.
- ¶ 9 In Count I of its complaint, CAP sought a judgment declaring that the City violated a state statute and its own RFP when it awarded the contract to Westfield. In Count II, CAP sought an injunction to prevent the development of Terminal 5, again arguing that the contract with Westfield violated a state statute and the RFP. CAP sought mandamus directing the City to grant it the contract, or to re-bid the contract, in Count III. CAP sought to recover its bid preparation expenses as damages based on a theory of promissory estoppel in Count IV. In Counts V and VI, DFA and one of its affiliates, Chicago Duty Free Shops (CDFS), sought to recover damages for tortious interference with the economic advantage they expected to gain if the City had awarded CAP the contract. In Count VII, CAP charged the City with breach of contract, and CAP identified the RFP as the contract breached.

1-11-2332

¶ 10 The City invoked both sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2008)) in its motion to dismiss the complaint. The trial court granted the motion. CAP, DFA and CDFS now appeal.

¶ 11 ANALYSIS

¶ 12 Ordinance

¶ 13 We review *de novo* the dismissal of a complaint under section 2-615 and 2-619 of the Code. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004); *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282 (2006). In Counts I, II and III of the complaint, CAP asks the court to issue an injunction, a declaratory judgment and a writ of mandamus that would stop all construction and other activity the City approved when it adopted the ordinance that granted the contract to Westfield. If this court grants CAP the relief it requests in any of those counts, this court will need to invalidate the ordinance by which the City agreed to the contract with Westfield.

¶ 14 Our supreme court has established severe limits on the grounds on which a court can invalidate an ordinance. In *Landmarks Preservation Council v. City of Chicago*, 125 Ill. 2d 164 (1988), our supreme court held that a court has authority to invalidate an ordinance only if the ordinance violates a constitutional provision or a federal or state statute. *Landmarks*, 125 Ill. 2d at 179. CAP suggests that the City's alleged failure to adhere to its own RFP provides grounds for overturning the ordinance. But the *Landmarks* court specifically held that when a city acts in a legislative capacity, its failure to adhere to self-imposed requirements cannot justify court intervention to invalidate an ordinance. *Landmarks*, 125

1-11-2332

Ill. 2d at 179.

- ¶ 15 The adoption of a contract for development of Terminal 5 to present Chicago to international travelers, and to produce long-term revenue for the city, required extensive deliberation about the best use of city property and the prospective advantages and disadvantages of conflicting approaches to that use. In these circumstances, we find that the City acted in a legislative capacity, and not in an administrative capacity, when it issued the RFP and when it adopted the ordinance granting the contract to Westfield. See *DMS Pharmaceutical Group v. County of Cook*, 345 Ill. App. 3d 430, 440-42 (2003). Because the City imposed on itself any requirements of its RFP, we lack authority to determine whether it violated those requirements when it adopted the ordinance. Therefore, following *Landmarks*, we review the dismissal of the counts in which CAP seeks to overturn the ordinance only to determine whether CAP adequately alleged constitutional or statutory violations that could invalidate the ordinance.
- ¶ 16 CAP argues that the City violated several provisions of the Municipal Code when it adopted the ordinance. See 65 ILCS 5/8-10-2.5, 8-10-3, 8-10-4 (West 2008). However, those sections of the Code do not apply to home rule governments like the City, as none of those sections include the language needed to make the statutes apply to home rule units. See *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 186-88 (1992). The Code sections at issue here, like the statute in *Scadron*, "do[] not specifically refer to home rule municipalities as [they] must under our constitution if a power of a home rule unit is to be limited." The alleged violations of the Municipal Code and the RFP provide no grounds for invalidating

1-11-2332

the ordinance.

¶ 17 CAP argues that the City conducted an unfair bidding process, and that if we permit such unfairness to go unchecked, we allow corruption and fraud to escape judicial scrutiny. We believe that if CAP could show corruption or fraud, it could show that the procedures violated applicable statutes. See 720 ILCS 5/33E-1 *et seq.* (West 2008). Because the City is a home rule unit of government, and CAP has not alleged that the award of the contract to Westfield violates a constitutional provision or a statute applicable to a home rule unit of government, the trial court correctly dismissed CAP's counts for a declaratory judgment, for an injunction, and for mandamus.

¶ 18 Breach of Contract

¶ 19 CAP could recover its bid expenses as damages for breach of contract without an invalidation of the ordinance awarding the contract to Westfield. See *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority*, 23 Cal. 4th 305, 315-20, 1 P.3d 63, 69-72 (2000) (collecting cases); *State Mechanical Contractors, Inc. v. Village of Pleasant Hill*, 132 Ill. App. 3d 1027, 1032 (1985). For the causes of action CAP attempts to state in Counts IV and VII of its complaint, it needs to show that the City made a promise in its RFP, and that it breached that promise. Similarly, for Counts V and VI, DFA and CDFS alleged that they had reasonable expectations of continuing to do business with CAP in Terminal 5 because of the promises the City made in its RFP.

¶ 20 CAP argues that the City breached the RFP because it allowed Westfield to make a bid in which Westfield did not guarantee payment of the proposed MAG. Westfield made the

1-11-2332

payment of its proposed MAG depend on continued traffic in Terminal 5 at approximately the rate achieved in 2008. The RFP permits the City to reject a proposal as incomplete, but the RFP includes no promise that the City will reject incomplete proposals. When the City considered a proposal from Westfield that included a contingent MAG, the City did not breach any promise it made to CAP.

- ¶ 21 The City in the RFP promised to evaluate all of the proposals using a system by which it awarded points to each proposal for each of five evaluation criteria. CAP claims that the City awarded Westfield's proposal points as the bidder providing the greatest compensation to the City, although the most Westfield projected it would pay to the City amounted to less than the MAG CAP guaranteed it would pay. The City Council debates included in the record show that the City did not believe CAP's revenue and payment projections included in its proposal. The City instead accepted Westfield's projections for the revenues Westfield and the City would realize with the new construction and design Westfield proposed, and the counsel members concluded that the City would actually receive greater payments under the Westfield proposal.
- ¶ 22 Even assuming the council erred, and the council should have awarded CAP's proposal the maximum points for payments to the City, CAP still has not alleged facts that could support a finding that the City breached the RFP. The City expressly stated in the RFP that "The City is not required to select the proposal with the highest proposed Minimum Annual Guaranteed fees or the highest projected compensation to the City." (Emphasis in original). The complaint includes no allegation about the other factors the City promised to weigh in

1-11-2332

evaluating proposals. The facts alleged in the complaint cannot support a finding that the City incorrectly awarded points for Westfield's experience and qualifications, merchandising and concept plan, facility design, and management and operating plan. The complaint's allegations do not support a finding that the points the City should have awarded CAP would have outnumbered the points the City properly awarded to Westfield on all criteria. Thus, even if CAP could prove the truth of all facts alleged in the complaint, it would not have proved a breach of contract or other actionable breach of promise. Because CAP, DFA and CDFS premised counts IV, V, VI and VII on breaches of promises made in the RFP, the trial court correctly dismissed the counts for failure to state a cause of action.

¶ 23

CONCLUSION

¶ 24

Because the City acted in its legislative capacity when it evaluated the proposals for redesign and management of concessions in Terminal 5, we cannot disturb the ordinance in which the City awarded the contract to Westfield unless the City violated a constitutional or statutory provision. CAP claims that the City violated parts of the Municipal Code, but those provisions do not apply to home rule units like the City. The facts alleged in the complaint cannot support an inference that the City breached any promise it made to CAP. Therefore, we affirm the dismissal of CAP's complaint with prejudice.

¶ 25

Affirmed.